

Exhibit 1

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

AGENCY: ACS

EPIN: 06811P0020007

CONTRACT: Family Foster Care - CWS RFP

I hereby approve as to form the annexed contract by standard type of class. This approval is valid until 10/11/2011 and for a maximum of 26 contracts. The above approval is made on the express understanding that the substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

Expiration	Additional Number Allowed	Total Number Allowed	Date Added	Approved By
10/11/2011	26	26	04/11/2011	Electronically Signed By STEVEN CUSHMAN
/ /	0	0	/ /	

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Electronically Signed By STEVEN
CUSHMAN

ACTING CORPORATION COUNSEL

DATE: 04/11/2011 11:16

**AGREEMENT FOR THE PURCHASE OF
REGULAR FAMILY FOSTER CARE SERVICES**

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Attachment III	The Foster Care Quality Assurance Standards
Attachment IV	The Budget and Funded Capacity
Attachment V	Delegation and Centralization of Case Management Casework Requirements

B/RD.RFFC.A10
1-08-10

**AGREEMENT FOR THE PURCHASE OF
REGULAR FAMILY FOSTER CARE SERVICES**

THIS AGREEMENT, dated this 6th day of May, 2011 between the City of New York ("City") acting through City Administration for Children's Services ("ACS" or "Department") with offices at 150 William Street, New York, New York 10038 and Community Counseling and Mediation Services, Inc. ("Contractor") located at One Hoyt Street, Brooklyn, NY 11201.

WITNESSETH

WHEREAS, the Commissioner of ACS, which is an authorized agency as defined by SSL § 371(10), is charged with the responsibility for the administration of all child welfare services in the City; and

WHEREAS, ACS wishes to serve Foster Children and their families in their neighborhood of origin by placing them in Foster Homes within their communities whenever appropriate; and

WHEREAS, the Commissioner may provide child welfare services through an authorized agency as defined in the SSL; and

WHEREAS, the Contractor is an authorized agency as defined in the SSL; and

WHEREAS, ACS issued a Request for Proposals with a release date of May 20, 2009 and a Procurement Identification Number 0682009CWSCP ("RFP") to establish family foster care services that will ensure the safety, permanency, and well-being of all New York City children and strengthen families; and

WHEREAS, the Contractor submitted a proposal in response to the RFP to provide the necessary family foster care services and the Contractor's proposal was accepted by ACS; and

WHEREAS, ACS requested the Contractor to provide family foster care services in accordance with the terms and conditions contained in this Agreement; and

WHEREAS, the Contractor under the terms of its corporate authority has the power to provide family foster care services and is willing and able to provide these services pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement the parties have agreed and so hereby agree as follows:

**AGREEMENT FOR THE PURCHASE OF
REGULAR FAMILY FOSTER CARE SERVICES**

PART I

**ARTICLE 1. CONTRACTOR SITE ADDRESSES
AND FUNDED CAPACITY**

Section 1.01 Contractor Funded Capacity

The Contractor's funded capacity by borough is listed in the Budget attached as Attachment IV.

ARTICLE 2. CONTRACT AMOUNT

Section 2.01 Contract Amount

ACS shall pay to the Contractor and the Contractor has agreed to accept for the services provided pursuant to this Agreement, an amount not to exceed \$7,308,387.00 for the five (5) year period from July 1, 2011 through June 30, 2016 in accordance with this Agreement and the Budget attached as Attachment IV. The Contractor must demonstrate that the work has been completed in a form satisfactory to ACS prior to payment in accordance with the terms of this Agreement.

ARTICLE 3. TERM OF AGREEMENT

Section 3.01 Term

The term of this Agreement shall begin on July 1, 2011 for a period of five (5) years through June 30, 2016.

Section 3.02 Renewal

A. ACS shall have the sole option to renew this Agreement for a maximum additional four (4) year term from July 1, 2016 through June 30, 2020.

B. ACS in its sole discretion may modify the length of the renewal option listed in Section 3.02(A) of this Part I. The total term of this Agreement after the exercise of the above option to renew shall not exceed nine (9) years. Any extensions of this Agreement may be made by ACS in its sole discretion and in accordance with the PPBR. All renewals and extensions shall be on substantially the same terms and conditions contained in this Agreement.

C. ACS may renew this Agreement by giving written notice to the Contractor no less than sixty (60) days prior to the expiration date of this Agreement including any renewal term. At each renewal interval, ACS agrees to reconsider and decide as it deems appropriate in its own discretion the target numbers for performance goals if requested to do so by the Contractor in

light of changing economic, social, or other conditions that make it necessary to reconsider those numbers. The exercise of each renewal option shall be subject to all required approvals, including ACS established criteria, the Law, and the appropriation of funds.

Section 3.03 Appropriation of Funds

Since the term of this Agreement involves performance by the Contractor in a subsequent City Fiscal Year(s), funding for this Agreement is subject to the appropriation of funds for such subsequent City Fiscal Year(s).

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**AGREEMENT FOR THE PURCHASE OF REGULAR
FAMILY FOSTER CARE SERVICES**

PART II

ARTICLE 1. DEFINITIONS AND ACRONYMS

Section 1.01 Definitions

Whenever the following terms and phrases are used in this Agreement and the attachments annexed to this Agreement, they shall have the following meanings, unless it is expressly indicated that such term or phrase is to have a different or additional meaning. All such other terms and phrases that shall not be specifically defined in this Part II, shall have the meaning ascribed to it by Law, or, in the event that such term or phrase is not described in the Law, it shall have the meaning as is commonly ascribed to it.

A. "ACS Policies" shall mean all applicable ACS policies, procedures guidelines, bulletins and standards, as amended. ACS Policies are incorporated by reference and may be found via the Contractor's access to ACS' intranet website at <http://10.239.3.195:8080/docushare/dsweb/View/Collection-4166>.

B. "Administrator" or "Commissioner" or "Agency Head" shall mean the Commissioner of ACS or her/his duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of her/his authority.

C. "Case Planning" shall mean the following functions and activities of the Contractor in connection with Recipients of Services which includes but is not limited to: conducting ongoing safety assessments for all children in a household and performing the regulatory function of child protective service monitor; scheduling required Family Team Conferences with the appropriate attendees; assessing service needs of children in care and their families; planning for service needs; arranging for service provision; coordinating service provision and/or participating in joint planning, when appropriate; evaluating the outcome of service provision; completing, approving and implementing the FASP; conducting minimum required casework contacts; and providing necessary documentation in the case record. The Contractor, through its assigned caseworker(s), carries out planning functions for the entire family unit. When a family is authorized to receive services from a single foster care provider, that provider is always the primary planning foster care provider. The primary planning foster care provider always has the responsibility to coordinate services for the entire family, to prepare the single, family-focused case record and to arrange and conduct Service Plan Review conferences. The above definition may change from time to time based on changes in ACS Policies, the Law, Federal and State Court orders, and stipulations of settlement or decree.

D. "City" shall mean the City of New York, its departments and political subdivisions.

E. "Comptroller" shall mean the Comptroller of the City of New York.

F. "CONNECTIONS" or "CNNX" means the New York State automated system designed to create a single integrated statement system for collecting and recording child protective, preventive, foster care and adoption services information.

G. "Day" shall mean a calendar day unless otherwise specified in this Agreement.

H. "Days of Care" shall mean the number of days in which a Foster Child is in placement in, and physically present at, a program operated by the Contractor, plus the number of days of allowable absences during the time in which the Foster Child is in placement in such program.

I. "Fiscal Manual" shall mean a set of instructions provided by ACS to the Contractor documenting the applicable policies and procedures of ACS for Contractor to use in such matters as record-keeping, bookkeeping, reporting, invoicing and claiming, budgeting, cost allocating, procurement and payroll, as may be amended by ACS. The Fiscal Manual is incorporated by reference and may be found online at www.nyc.gov/acs.

J. "Foster Child (ren)" shall mean a person or persons placed in and receiving services from the Contractor's family foster care program pursuant to this Agreement, ACS Policies and the Law. Generally, Foster Children meet the following criteria:

1. The child/youth is under the age of eighteen (18) years or is between the ages of eighteen (18) and twenty one (21) years and entered foster care before his/her eighteenth (18th) birthday and has consented to remain in foster care past his/her eighteenth (18th) birthday; and

a. is a student attending a school, college or university; or
b. is regularly attending a course of vocational or technical training designed to prepare him or her for gainful employment; or
c. lacks the skills or ability to live independently.

2. The child/youth is cared for away from his/her home twenty four (24) hours a day in a Foster Home, Residential Care Facility or combination thereof.

3. The child's/youth's care and custody or guardianship and custody has been transferred to an authorized agency pursuant to the provisions of SSL §§ 384 or 384-a or the child/youth has been placed with a social services official pursuant to Article 3, 7 or 10 of the Family Court Act.

K. "Foster Home" shall mean a residence owned, leased or otherwise under the control of a single person or family who has been approved or certified by an authorized agency to care for children, and such person or family receives payment from the agency for the care of such children.

1. "Approved Relative Foster Home" shall mean a Foster Home in which the foster parent is a relative within the second or third degree of the parent(s) or stepparent(s) of the child and who is approved to care for specific related children in accordance with 18 NYCRR 443.7 (for expedited approval) and/or with 18 NYCRR 443.3, or any successor or amended regulations, for full approval.

2. "Certified Foster Home" shall mean a Foster Home in which the foster parent is certified to care for the number of children indicated on the certificate in accordance with the requirements of 18 NYCRR 443.7 (for expedited certification) and 18 NYCRR 443.3 or any successor or amended regulations.

L. "Law(s)" shall mean all applicable Federal, State and City laws, regulations, ordinances and rules and any successor and any amendments thereto including but not limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law and including any waivers issued by OCFS.

M. "Office of Children and Family Services" or "OCFS" shall mean the New York State Office of Children and Family Services which is responsible for, among other things, regulating and monitoring child welfare services in New York State.

N. "Planned Placement" shall mean the placement of a child/youth with the Contractor following a planning process whereby, at the time of the placement, a placement packet (psychiatric, psychological and psychosocial) has been completed.

O. "Planned Placement Vacancy" shall mean a Contractor vacancy that may be filled by a Planned Placement.

P. "Recipients of Services" shall mean a child, his/her family unit, biological, adoptive or other family unit entrusted with the care of the child, his siblings and significant others related or unrelated to a child/youth who are determined by the Contractor and ACS to be an actual or potential source of support, care or assistance for the Foster Child.

Q. "Regular Placement" shall mean the placement of a child/youth into Foster Care which must be made immediately because of the need to ensure the safety and the welfare of the child/youth.

R. "Regular Placement Vacancy" shall mean a Contractor vacancy that may be filled by a Regular Placement.

S. "Residential Care Facility" shall mean a foster care facility other than a Foster Home. Such facilities include:

1. "Agency Operated Boarding Home" or "AOBH" shall mean a family-type home for the care and maintenance of not more than six (6) children operated by an authorized agency in quarters or premises owned, leased, or otherwise under the control of such authorized

agency except as may be permitted under 18 NYCRR 427.3.

2. "Supervised Independent Living" or "SILP" shall mean special type of AOBH in which up to four (4) youth are allowed to reside on their own in the community, in a living unit separate from the authorized agency's other Residential Care Facilities, under the supervision of an authorized agency. Such facility is intended to serve as a transitional experience for youth whose permanency planning goal is "discharge to independent living."

3. "Group Home" shall mean a licensed family-type home operated and staffed by an authorized agency for the care and maintenance of seven (7) to twelve (12) Foster Children.

4. "Group Residence" shall mean a licensed institution operated and staffed by an authorized agency for the care and maintenance of up to twenty five (25) children.

5. "Institution" shall mean a licensed facility operated and staffed by an authorized agency for the care and maintenance of thirteen (13) or more Foster Children.

T. "State" shall mean the State of New York.

U. "Suspended Payment" shall mean the cessation of payments by the City to the Contractor when a Foster Child placed with the Contractor is not physically present and is not on an allowable absence.

Section 1.02 Acronyms

Whenever the following acronyms are used in this Agreement and the attachments annexed to this Agreement, they shall have the following meanings, unless it is expressly indicated that such acronym is to have a different or additional meaning.

AIDS – Acquired Immune Deficiency Syndrome
APLA – Another Planned Living Arrangement
B2H – Bridges to Health
CCRS – Child Care Review System
CIN – Client Identification Number
CPA – Certified Public Accountant
CSC – Child Safety Conference
DCJS – New York State Division of Criminal Justice Services
FASP – Family Assessment and Service Plan
FBI – Federal Bureau of Investigation
FCLS – Administration for Children's Services Division of Family Court Legal Services
FTC – Family Team Conference
GAAP – Generally Accepted Accounting Principles
HIV – Human Immune-deficiency Disease
IEP – Individualized Education Plans
LTS – Legal Tracking System

NYCRR – New York Codes, Rules and Regulations
OASAS – New York State Office of Alcoholism and Substance Abuse Services
PH – Permanency Hearing
PINS – Person In Need of Supervision
PYA – Preparing Youth for Adulthood
SCR – New York State Central Register of Child Abuse and Maltreatment
SSL – New York State Social Services Law
SSPS – Statewide Service Payment System
TPR – Termination of Parental Rights

ARTICLE 2. SCOPE OF SERVICES

Section 2.01 General Requirements

A. The Contractor shall provide comprehensive family foster care services as set forth in this Agreement, the Law, court orders and mandates, ACS Policies, the Fiscal Manual and the following documents which are attached to this Agreement and made a part of this Agreement:

1. Appendix A: General Provisions Governing Contracts For Consultants, Professional, Technical, Human And Client Services;
2. Attachment I: The RFP;
3. Attachment II: The Contractor's Proposal and if applicable any Negotiated Addendum to the Proposal;
4. Attachment III: The Foster Care Quality Assurance Standards;
5. Attachment IV: The Budget and Funded Capacity; and
6. Attachment V: Delegation and Centralization of Case Management Casework Requirements.

B. Attachment III, Attachment IV, and Attachment V may be revised at the sole discretion of ACS allowing for a (30) thirty-day comment period prior to implementation. Attachment II may be modified only upon mutual written agreement of the parties.

C. ACS reserves the right to issue ACS Policies for the purposes of explaining new and existing standards, policies or procedures. Any such ACS Policies shall be submitted to the Contractor for review and discussion at least thirty (30) days prior to final publication and implementation. The Contractor should use this time to submit comments to ACS. Any new ACS Policies shall be applied prospectively. The Contractor shall comply with ACS Policies, the Law, Federal or State Court orders, and stipulations of settlement or decree.

Section 2.02 Key Components and Approaches

A. The Contractor shall ensure that placement and supportive services are in place and available to promote timely reunification between Foster Children and their families, while ensuring safe and stable foster care experiences for Foster Children in settings that are as familial and least restrictive as possible consistent with the needs of the Foster Child. ACS shall share

with the Contractor as soon as possible any current assessment of the Foster Child's needs and any identified safety issues.

B. ACS shall provide the Contractor with all relevant information regarding the needs of the child/youth and family for children/youth referred to the Contractor.

C. The Contractor shall operate according to the following principals and practices in efforts to maximize and improve safety, permanency and well-being for Foster Children:

1. Minimized periods of time spent in foster care and timely permanency through family reunification or adoption according to the strengths and needs of each Foster Child and his/her family.

2. Placement stability that minimizes the occurrence of replacements and relocations including movements from family foster care to residential care, and provides consistency in care throughout the time that Foster Children remain in care.

3. In the event a Foster Child is removed from family foster care to residential care, the Contractor shall make efforts to minimize the length of time spent in residential care, returning the Foster Child to a family setting as soon as possible consistent with the needs and behaviors of the Foster Child as determined at the FTC.

4. Except where otherwise indicated for the safety and well-being of a Foster Child, the Contractor shall make efforts to place Foster Children in a Foster Home that is in the same community in which their birth parents/caretaker resides.

5. Safety from abuse and neglect while in foster care.

6. Implement discharge planning and services to avoid re-entry of a Foster Child into foster care after discharge.

7. Implement services and support for Foster Children to develop to their fullest potential and become healthy, educated, and constructive members of the community with successful transitions to adulthood.

8. Create and foster permanent adult connections for all Foster Children, including older Foster Children, when they leave foster care.

Section 2.03 Staff Training and Development

A. The Contractor shall continually assess the training needs of the Contractor's staff based on the population of Foster Children in the Contractor's care and tailor the training to ensure that its staff receives appropriate training.

B. In addition to the standards and expectations set forth in the *Foster Care Quality Assurance Standards*, the Contractor shall ensure that all Contractor staff except administrative

and support staff shall receive training each year to enhance their understanding of the needs and characteristics of the population in care and their skills to provide emotional support and care, and appropriately manage the behavior of Foster Children. Such training shall include the following:

1. Training on trauma, the impact of abuse/maltreatment on children/youth, and the steps the Contractor's staff can take to mitigate past trauma and prevent additional trauma;
2. Training on the complex social, medical, developmental, nutritional and emotional needs of Foster Children, the effect of those needs on their normal growth and development, and demands and skills required in caring for Foster Children;
3. Education on the importance of initial and ongoing medical and mental health treatment and the importance of keeping scheduled appointments as well as compliance with treatment and on basic pharmacology as needed for Foster Children, including but not limited to the actions, side effects, and possible adverse reactions of medications that such Foster Children may be taking and basic information about administering medication and the dangers that can result from missed or improperly-administered doses of medications;
4. Training on behavior modification and management;
5. Training on youth development and permanency practice; and
6. Training on the Family Court process.

Section 2.04 Recruitment, Training and Certification of Foster and Adoptive Parents

A. Identification of Prospective Foster Parents and Adoptive Parents

1. Recruitment

a. The Contractor shall recruit prospective foster parents and adoptive parents who are able to provide a safe and nurturing environment in accordance with the Law and ACS Policies, and have the capacity and interest to become foster and/or adoptive parents. The Contractor shall establish a sufficient number of Foster Homes consistent with the capacity established in this Agreement to serve children/youth in need of foster care services, placing Foster Children within or as close to their communities as possible. ACS will provide and the Contractor shall base its efforts for the recruitment and retention of foster parents on placement data that indicates the need for homes in particular communities for Foster Children by age group, gender, medical conditions, culture, ethnicity, language, and the demand for homes that can support sibling groups. ACS shall assess the placement data and adjust recruitment targets in a timely manner. The Contractor shall also conduct specialized recruitment in efforts to recruit and identify foster parents who are willing to care for Foster Children with specialized needs.

b. When a child/youth is placed with the Contractor, the Contractor shall make efforts where appropriate to recruit, as foster parents, individuals with whom the Foster Child already has a positive relationship, including relatives and non-relatives.

2. Preparation of Foster and Adoptive Parents: The Contractor shall provide all prospective foster and adoptive parents with an orientation on foster parenting prior to accepting their application or prior to conducting their home study. The Contractor shall ensure that prospective foster and adoptive parent applicants satisfactorily complete training as required by Law and ACS Policies, including the *Foster Care Quality Assurance Standards*, prior to receiving certification as foster parents. For kinship homes identified by ACS, the Contractor shall assess the home in accordance with ACS Policies and the Law.

B. Certification or Approval

1. Compliance with Law: The Contractor shall ensure that all Foster Homes, including emergency Foster Homes, are certified or approved in accordance with the Law including 18 NYCRR Part 443 and any successor or amended regulation.

2. Application: The Contractor shall screen all prospective foster and adoptive parents, which must include verification of age, source of income or receipt of Public Assistance, education history, and employment history.

3. Statewide Central Register of Abuse and Maltreatment Clearance: The Contractor shall clear all members of the prospective foster and adoptive parents household with the SCR to determine whether any member of the household including the applicant has been or is currently the subject of an indicated child abuse/maltreatment report. In the event the applicant or any person residing in the home that is eighteen (18) years of age or older has lived for any period of time in another state during the previous five (5) years, the Contractor shall also inquire of each state the individual has resided in within the previous five (5) years whether the individuals have been the subject of an indicated abuse or maltreatment report in that state. ACS shall provide the Contractor with the contact information for clearance requests in all states. The Contractor shall include, as a part of the household, any in-home, out of home or emergency caretakers that provide child care for the prospective foster parents in the foster parent home study. The Contractor shall ensure that all such caretakers are cleared with the SCR to determine whether they have been or are currently the subject of an indicated child abuse/maltreatment report.

4. Fingerprinting and Criminal History Record Check: The Contractor shall conduct criminal history records checks with the DCJS and the FBI for every prospective foster and adoptive parent and each person over the age of eighteen (18) years of age who currently resides in the home of such prospective foster and adoptive parent before the foster and adoptive parent can be approved or certified for the placement of a Foster Child. In furtherance of the criminal history record check, the Contractor shall obtain and/or arrange for the taking of fingerprints and obtain signed 'Consent for the Release of Confidential Information' forms from every applicant and every person eighteen (18) years of age and older, including Foster Children who are over eighteen (18) years of age, who currently reside in the home of such prospective or

existing foster parent in the manner prescribed by OCFS and such other information as is required by the OCFS, DCJS and the FBI. Once collected, the Contractor shall arrange for the submission of fingerprints and signed consent forms to OCFS. In the event there is an indication of a criminal history, the Contractor shall comply with ACS Policies and the provisions set forth in the Law including 18 NYCRR 443.7 when seeking certification or approval for a Foster Home on an emergency basis; or 18 NYCRR 443.8 when seeking certification of a prospective foster parent; or 18 NYCRR 443.9 when seeking concurrent certification or approval of an individual as both a foster and adoptive parent, or any successor or amended regulations to determine whether or not to certify or approve the foster parent application.

5. Home Study: The Contractor shall conduct a Home Study that meets all New York State licensing, certification and/or approval requirements in accordance with ACS Policies and the Law including 18 NYCRR Part 443 or any successor or amended regulation. The Contractor shall ensure that all emergency Foster Homes are certified or approved pursuant to the Law including 18 NYCRR 443.7 or any successor or amended regulation.

6. References: The Contractor shall obtain three (3) references for each prospective foster and adoptive parent. One (1) reference shall be in writing, and two (2) shall be obtained through face-to-face interviews conducted by qualified staff of the Contractor. The Contractor must document each reference in the applicant's foster parent record.

7. Recertification: The Contractor shall ensure that the certification or approval for each Foster Home is renewed on an annual basis, including an update of the home study, in accordance with ACS Policies and the Law including 18 NYCRR 443.10 or any successor or amended regulation. The Contractor shall establish a protocol for immediate replacement of the Foster Child with another foster parent in the event that his/her foster parents not meet the recertification requirements.

8. Concurrent Certification: The Contractor shall ensure that all individuals applying to be both foster and adoptive parents are certified or approved pursuant to the Law including 18 NYCRR 443.9 or any successor or amended regulation.

C. Foster Parent Training

1. Training: The Contractor shall ensure that foster parents receive ongoing in-service training that takes into account the needs of the foster parents and the population of Foster Children served. The Contractor shall ensure that foster parents receive a minimum of six (6) hours of such training annually and make efforts to connect foster parents to an additional six (6) hours of training through community based supports and/or ACS provided training.

2. Training for Re-Certification or Re-Approval: The Contractor shall ensure that all foster parents complete all required training contained in the ACS Foster Parent Agreement form in order to be re-certified or re-approved as foster parents.

3. Recordkeeping and Documentation of Foster Parent Training in CONNECTIONS: The Contractor shall document all training that is administered to foster

parents in accordance with ACS Policies including the *Foster Care Quality Assurance Standards*.

Section 2.05 Support Services for Foster and Pre-Adoptive Parents

A. Communication between the Contractor and Foster and Pre-Adoptive Parents:

The Contractor shall maintain and foster ongoing communication with all foster and pre-adoptive parents. The Contractor shall encourage foster parents to communicate to case planners and other appropriate Contractor staff issues regarding key events in their Foster Child's life, including but not limited to birthdays, holidays, first days of school, changes to parent or sibling visitation orders, meetings with school staff, Family Court hearings, service plan reviews and other conferences. The Contractor shall instruct foster parents to contact the Contractor when an event, situation or emergency occurs that falls outside of the foster parents' general responsibilities, the foster parent feels they cannot handle without assistance.

B. Engagement with Foster Children: The Contractor shall instruct foster and pre-adoptive parents to both engage their Foster Children in the decision making process regarding their future, and offer them an opportunity for meaningful participation in that process. The Contractor shall involve Foster Children in their own case planning and encourage them to serve as advocates on their own behalf as appropriate to their age/developmental level.

C. Working with Foster Parents: The Contractor shall offer support that is aimed at recruiting and retaining foster parents.

1. The Contractor shall hold regular meetings with groups of foster parents to obtain feedback about the quality of the Contractor's available support systems. The Contractor shall work with foster parents and utilize data from such meetings to develop a foster parent support plan, which shall be updated at least once a year.

2. The Contractor shall provide foster parents with emergency on-call support, which shall be available twenty-four (24) hours day, seven (7) days a week and shall include, but not be limited to crisis intervention support.

3. The Contractor shall collaborate with each foster family on the development of an emergency/evacuation plan for their Foster Home.

4. The Contractor shall provide every foster parent with an emergency wallet card with instructions on how to contact their caseworker, their caseworker's supervisor, a Contractor administrator, and the ACS Office of Advocacy by telephone and email.

5. The Contractor shall supply each foster parent with a photo-identification card upon the foster parent's request, and ensure options are available for foster parents to receive their monthly stipends by direct deposit upon request.

6. The Contractor shall develop and implement procedures to address foster parents' concerns. The Contractor shall work with foster parents to create and sustain a network

of foster parent support groups. The Contractor shall also implement and options to dispense information discussed during support group meetings for foster parents that are unable to attend support group meetings.

7. The Contractor shall ensure that foster parents are a part of the decision making process during FTC's and other conferences.

8. The Contractor shall ensure that foster parents have a meaningful role in the development of the Contractor's policies and program planning activities.

9. The Contractor shall educate foster parents on parental mental health and its impact on Foster Children.

Section 2.06 Adoption Services

A. Recruitment: The Contractor shall facilitate where appropriate foster parents to adopt Foster Children in their care. In such situations, when foster parents intend to adopt, the Contractor shall complete an adoption home study and have approved adoptive parents sign an adoption placement agreement once the child/youth is freed for adoption. For Foster Children who are freed for adoption and are not placed in a home that will adopt, the Contractor shall make diligent efforts to recruit and identify adoptive homes.

B. Home Study: The Contractor shall conduct or arrange for a home study of all prospective adoptive parents pursuant to the Law including 18 NYCRR Part 421 or any successor or amended regulation. The Contractor shall educate prospective adoptive parents about the types of trauma that can be caused by abuse and maltreatment in addition to the behaviors that can result from such trauma.

C. Filing for Adoption in Family Court: For each adoption, the Contractor shall require and take steps necessary for the prospective adoptive parents to file an adoption petition in the Family Court as soon as practicable from the date of notice that the Foster Child has been legally freed for adoption, except when the Foster Child was freed for adoption through an extra-judicial surrender, in which case the petition may not be filed until at least forty-five (45) days after the surrender was executed; or the Foster Child was freed for adoption through an order of a court committing custody and guardianship of the Foster Child to the Commissioner and to the authorized foster care provider pursuant to the provisions of SSL § 384-b in which case, the petition may not be filed until at least thirty (30) days after service of the order of commitment on the birth parent(s)/caretaker(s).

D. Comprehensive Adoption Report: The Contractor shall maintain and update comprehensive adoption reports, including objective and comprehensive information on the Foster Child, the adoptive family, and the birth parents/caretakers, to facilitate expeditious adoptions and assist family court judges and/or surrogates when determining whether adoption is in the best interest of a Foster Child.

Section 2.07 Referral, Intake and Placement

A. Placement: A child/youth is deemed to have been placed with the Contractor on the day on which the child/youth enters the Contractor's care pursuant to a referral to the Contractor by ACS.

B. Referral and Intake

1. ACS, pursuant to the Commissioner's responsibility and authority under Article 6 of the SSL and the City Administrative Code, shall, in its sole discretion, refer children/youth in need of service, for placement with the Contractor. Both parties agree to comply with all Laws prohibiting discrimination in placement on the basis of any factors including, but not limited to race, religion, color, national origin, disability, age, sexual orientation and gender identity, and each child/youth will have access to quality services. The parties shall, where practicable, recognize the statutorily permissible desire for in-religion placement, in accordance with SSL §373 and in a manner consistent with the principles of equal protection and non-discrimination as defined in other applicable Law. Pursuant to 18 NYCRR 441.11, the parties shall preserve and protect the religious faith of the child/youth.

2. Notwithstanding any provision to the contrary contained in this Agreement, ACS shall have complete and final authority over all placement decisions and referrals for placement.

3. If a parent physically appears at the Contractor's offices seeking voluntary placement of a child/youth, the Contractor shall, in compliance with all Laws and ACS Policies, refer that child/youth to the appropriate ACS office. Thereafter, ACS shall determine whether the child/youth needs placement and, if necessary, ACS shall place the child/youth.

4. The Contractor may recommend that a child/youth referred to ACS for placement is placed in its care.

5. In accordance with this Agreement including Section 2.01 of Part II of this Agreement entitled "General Requirements," the Contractor shall make best efforts to find a foster family able and willing to provide care for children/youth referred by ACS who meet the criteria for family level of placement.

C. Capacity and Vacancy Reporting and Wait List

1. The Contractor shall report its capacity, Regular Placement Vacancies, and Planned Placement Vacancies to ACS as follows:

a. Capacity. The Contractor shall accurately report its capacity on a monthly basis or more frequently as requested by ACS.

b. Regular Placement Vacancy Reporting. The Contractor shall report to ACS its Regular Placement Vacancies on a daily basis by 10:00 AM or as soon as possible

thereafter.

c. Planned Placement Vacancy Reporting. The Contractor shall report to ACS its Planned Placement Vacancies every Monday and Thursday by 12:00 pm (noon) or as soon as possible thereafter via the Vacancy Control database.

d. Back-up Staff: The Contractor shall designate one person and an additional back-up staff person from its intake section as a liaison who will report vacancies to ACS.

2. The Contractor's failure to report vacancies in accordance with this Agreement, including ACS Policies, shall trigger an immediate review of the Contractor's vacancy reporting process and may result in the suspension of the Contractor's intake.

3. Waitlist: For Planned Placements, the Contractor may place children/youth referred to it on a waitlist in the event the Contractor does not have a vacancy. Notwithstanding the Contractor's ability to place a referred child/youth on the Contractor's waitlist, ACS may in its sole discretion place the child/youth with another foster care provider.

Section 2.08 Permanency Planning

A. Service Plan Design and Delivery

1. Upon the placement of a Foster Child with the Contractor in accordance with this Agreement, the Contractor shall provide case planning, permanency and supportive services in accordance with all Laws and ACS Policies.

2. Notwithstanding Section 2.08 (A)(1), above, case planning responsibility for Foster Children who are being transferred to a residential care provider from the Contractor's family foster program shall be transferred to the residential care provider or retained by the Contractor in accordance with ACS Policies.

3. For cases in which the Contractor does not have case planning responsibility for a Foster Child in its care, the Contractor shall be responsible for cooperating with the case planning foster care provider to ensure well-coordinated services. Such cooperation shall include:

- a. Coordination of visitation between the Foster Children and their birth parents/caretakers;
- b. Coordination of visitation between siblings;
- c. Completing relevant portions of the FASP; and
- d. When necessary, attendance at FTCs.

4. The Contractor shall prepare foster parents with knowledge about the needs of a child/youth before placing the child/youth in such foster parent's home. After placement of a Foster Child, the Contractor shall continue to provide foster parents with appropriate educational and information services, as needed, specific to the Foster Child placed a foster parent's home. The Contractor shall adhere to the provisions of the Law including 18 NYCRR 443.2 or any successor or amended regulation regarding authorized agency operating requirements.

B. Case Opening Criteria and Procedures

1. Intake and Admissions

a. The Contractor and the Contractor's staff shall be available twenty-four (24) hours a day, seven (7) days a week, to receive intake referrals from ACS.

b. The Contractor shall implement and document policies and procedures that define the intake and placement process for Foster Children entering the Contractor's care, and that clearly delineates the types and intensity of services provided to meet the needs of the Foster Children. The Contractor's intake and placement process must comply with this Agreement and ACS Policies.

c. ACS shall assign a CIN to each Foster Child, document eligibility requirements and placement/payment information in CNNX and document other required systems to support payment to the Contractor within three (3) business days of the Foster Child's placement.

d. The Contractor shall verify with ACS that a case record is opened immediately upon the admission of each Foster Child entering the Contractor's care. The Contractor shall maintain a Uniform Case Record in accordance with the Law. The Contractor shall have specified procedures for obtaining admission information on Foster Child, including receiving information from ACS and integrating it into Foster Child's immediate service plan.

2. The First Two (2) Business Days after Placement

a. Foster Home Visit: The Contractor's staff shall visit each Foster Home, including the homes of kinship foster parents, within two (2) business days after a Foster Child has been placed in such Foster Home, during which time the Contractor shall perform a safety and risk assessment of the Foster Home as well as a permanency assessment. All visits and contacts to a Foster Home shall be conducted in accordance with the Law and ACS Policies.

b. Initial Contact with Birth Parents/Caretakers: The Contractor shall initiate contact with birth parents/caretakers within the first two (2) business days of such Foster Child's placement in a Foster Home in efforts to engage the birth parents/caretakers in the permanency planning process.

3. Visitation and Establishment of Visitation Plan

a. Responsibility for Visits: In accordance with ACS Policies, the Contractor shall arrange and facilitate visits and other forms of contact between Foster Children, their birth parents/caretakers, and among separated siblings. When appropriate, the Contractor may facilitate visits between Foster Children and other significant adults in their life.

b. Sibling Contact: The Contractor shall ensure that all siblings and half siblings be placed together whenever possible, unless such placement would be a risk to a Foster Child's health and safety. When placement together is not possible or appropriate, the Contractor shall arrange frequent opportunities for sibling visits, communication by telephone, letters, and or other forms of regular and meaningful contact.

c. Scheduling: When making visitation arrangements, the Contractor shall take into consideration the schedules and transportation options of all those involved, including birth parents/caretakers, Foster Children, and foster parents. The Contractor shall ensure that Foster Children are actively involved in their own visitation planning and scheduling process. The Contractor shall facilitate evening and weekend hours for supervised visits to take place. The Contractor may comply with this requirement by collaborating with community-based partners who offer space during evening and/or weekend hours. When making visitation arrangements, the Contractor shall take into consideration travel distance, cost and safety issues, including situations involving domestic violence where visits must be monitored carefully so as not to compromise the safety of the Foster Children and their birth parent(s)/caretaker(s), as well as cultural, religious and language issues.

d. Onset of Visiting: In accordance with ACS Policies, the Contractor shall ensure that each Foster Child has an initial visit with their birth parents/caretakers within two (2) business days of removal or a new placement.

e. Activities and Location: When the goal is reunification, Foster Child - birth parent/caretaker visits shall serve as preparation for reunification, allowing birth parents/caretakers to resume as much parental responsibility as possible while maintaining the safety of the Foster Child. When making visitation arrangements, the Contractor shall accommodate Foster Children and their birth parents'/caretakers' schedules. The Contractor shall make efforts to provide a private comfortable space equipped with age-appropriate toys and materials when visits take place at the Contractor's site.

f. Supervision: The Contractor shall comply with ACS Policies regarding visitation between Foster Children and birth parents/caretakers including the *Best Practice Guidelines for Family Visiting Arrangements for Children in Foster Care*, August 28, 2006 or any successor or amended guideline. Visitation shall be unsupervised unless the Contractor can justify and/or document reasons that supervision should be supervised. ACS and the Contractor acknowledge that these decisions are sometimes made by the Family Court.

g. Visitation and the Visiting Plan

i. Visitation between a Foster Child and his/her birth parents/caretakers shall not be suspended or limited in a punitive manner solely due to the birth parents'/caretakers' lack of compliance with the outlined services developed by the Contractor, unless such noncompliance is directly related to the birth parents'/caretakers' ability to keep their child/youth safe. Additionally, the Contractor shall not prohibit visitation as a form of discipline or punishment for the Foster Child.

ii. When reunification is the permanency goal, and unless the Contractor can justify and/or document reasons to the contrary, visitation frequency and length shall increase over time, with the level of any supervision deemed necessary decreasing over time as consistent with the well-being and safety of the Foster Child. The Contractor shall ensure that a Foster Child with a goal of reunification have visitation with his/her birth/caretaker family at least once a week, except for infants, which shall have visitation with their birth/caretaker family at least twice a week. Whenever reunification is the permanency goal for a Foster Child, that Foster Child's visitation plan shall evolve from one (1) visit to two (2) visits per week to more frequent visits of greater length, to overnight and weekend visits, leading to trial and then final discharge.

iii. The Contractor shall evaluate each Foster Child's visitation plan at least on a quarterly basis. During supervised visits, the Contractor shall observe and assess birth parent/caretaker-Foster Child interactions to understand the birth parents'/caretakers' progress in modifying their own behavior so that birth parents/caretakers can eventually care for the Foster Child safely. For unsupervised visits, the Contractor shall discuss how the visit went with the birth parents/caretakers and Foster Child separately, and with any other adult who was a part of the visit in efforts to understand and assess birth parents'/caretakers' capacity to care safely for the Foster Child. If a Foster Child's visitation plan has not progressed between quarterly reviews, the Contractor shall document the reasons the visitation plan has not progressed clearly in the case record. At a minimum, the Contractor shall review each Foster Child's visitation plan and level of supervision at all FTC's, service plan reviews, dispositional and permanency hearings, and at any other court dates. The Contractor and ACS acknowledge that court orders pertaining to visitation can only be modified in court.

iv. When considering a change in visiting plan, the Contractor shall have a caseworker present at all or part of a visit to assess case circumstances and progress, in order to ensure that the proposed change in the visitation plan is appropriate. Except as indicated below, Foster Children shall not be trial or final discharged from foster care without first having experienced successful overnight and weekend visits with the birth parent/caretaker over a period of time. The only exception is for cases where there is a court order for an immediate discharge for a Foster Child, where the Contractor shall comply with the provisions of the court order regardless of whether or not there have been prior overnight and/or weekend visits. At the same time, the Contractor shall remain fully involved in assessing and acting as needed to keep the Foster Child safe unless a court order for an immediate discharge/case closure precludes such ongoing involvement. The Contractor may contact FCLS and recommend

appealing court ordered discharges with which the Contractor disagrees due to safety or risk concerns.

v. Visits with Birth Parents/Caretakers Who are Incarcerated:

The Contractor acknowledges that birth parents/caretakers who are incarcerated retain their parental rights to visits until their rights are terminated or a court has suspended visitation. Upon birth parent/caretaker incarceration, the Contractor shall establish a new visitation plan. When the permanency goal is reunification, the Contractor shall arrange for visits at least once a month between Foster Children and their birth parents/caretakers who are incarcerated within fifty (50) miles of the Foster Child's placement. If a Foster Child's birth parent/caretaker is incarcerated further than fifty (50) miles from the Foster Child's placement, visitation shall be carried out in accordance with the established visiting plan. When the whereabouts of a birth parent/caretaker are unknown, the Contractor in accordance with ACS Policies shall inquire as to whether the birth parent/caretaker may have been arrested and is incarcerated.

h. Visiting Initiatives: The Contractor shall work with the Community Partnership in the community, if any, to locate visitation hosts for Foster Children and their families and additional community venues where visitations can be hosted.

C. Engagement and Assessment: Engagement and assessment are core responsibilities of the Contractor. The Contractor shall engage Foster Children, birth parents/caretakers, discharge resources, and foster parents on a regular basis throughout the permanency planning process. The Contractor shall document the Contractor's engagement and assessment efforts in each Foster Child's case record. The Contractor shall use engagement and assessment information obtained on behalf of each Foster Child to inform and enhance case planning, service delivery and service coordination for each Foster Child. Such information shall be applied and incorporated in appropriate situations, settings, meetings and appointments, including but not limited to FTCs. In addition to the assessment requirements set forth below, the Contractor shall initiate conversations with appropriate individuals, including Contractor's staff, service providers, family members and foster parents, about the needs of each Foster Child. Furthermore, the Contractor shall assist Foster Children ten (10) and older to articulate their own needs.

1. Birth Parent/Caretaker Engagement

a. Placement Transition Meeting: In accordance with ACS Policies, the Contractor shall schedule and facilitate an initial meeting with the birth parents/caretakers ("Placement Transition Meeting") within two (2) business days of each Foster Child's placement for the purpose of educating birthparents/caretakers about their child's placement and educating them about family foster care (*see also* Section 2.08(B)(3)(d) of this Part II entitled "Onset of Visiting"). The Contractor shall assign a staff member to each Foster Child's birth parent/caretaker for the initial meeting.

b. The Contractor shall ensure that birth parents/caretakers are part of the Foster Child's programming while in family foster care with birth parents/caretakers being engaged throughout the Foster Child's planning process.

c. The Contractor shall ensure that birth parents/caretakers are engaged, appraised and involved with every aspect of the Foster Child's life, including but not limited to decisions regarding the service plan, education, medical issues, development and overall wellbeing. When possible, the Contractor shall take measures to facilitate the attendance of birth parents/caretakers at occurrences such as school conferences and medical appointments, and shall update birth parents/caretakers on the outcome of such events when they are unable to attend.

2. Safety and Risk Assessments: The Contractor shall conduct regular safety and risk assessments for each Foster Child and any other children living in a Foster Home. The initial safety and risk assessment shall occur during the initial visit made within two (2) business days of placing a Foster Child in a Foster Home. The Contractor shall also conduct safety and risk assessments with regard to the factors that led to each Foster Child's placement into foster care. The Contractor shall conduct all safety and risk assessments in accordance with the Law, ACS Policies, and OCFS guidelines.

3. Permanency Assessments: During the initial visit to a Foster Home, which is required to be conducted within two (2) business days of a Foster Child's placement, the Contractor shall begin assessing each Foster Child's permanency options, with such assessments continuing throughout the duration of each Foster Child's placement. The Contractor shall assess the permanency needs of each Foster Child, develop a permanency plan, and work to reach established permanency goals as soon as possible. The Contractor shall conduct all permanency assessments in compliance with the Law, ACS Policies and OCFS guidelines.

4. Initial Assessment/Evaluation: The Contractor shall complete an initial comprehensive assessment/evaluation for each Foster Child within thirty (30) days of placement. The initial comprehensive assessment/evaluation shall incorporate the input of clinical and social work experts and practitioners as appropriate to the needs of each Foster Child, including but not limited to a pediatric/adolescent medicine specialist, a developmental specialist, psychiatrist, psychologist, social workers, and educational, recreational, and vocational specialists. The Contractor shall ensure that the comprehensive assessment/evaluation integrates the results of any assessments done prior to the Foster Child's referral to foster care, assessments done since the Foster Child's placement and an assessment for past trauma (including incest and other sexual abuse) and presenting trauma symptoms.

5. Additional Foster Child Assessments: The Contractor shall conduct the following screenings/evaluations/assessments within thirty (30) days of each Foster Child's placement into foster care, in accordance with this Agreement and ACS Policies:

- a. Medical health and developmental screenings (Section 2.15(C) of this Part II entitled "Health Services");
- b. Mental health screenings, including chemical dependency/use screening for Foster Children age ten (10) years and older (Section 2.15(B) of this Part II entitled "Mental Health Services");

- c. Domestic Violence Screening; and
- d. Educational assessment.

D. Services Related to Abuse and Neglect

1. The Contractor shall ensure that Contractor's staff are trained in and carry out their responsibilities to report alleged child abuse or maltreatment in accordance with the Law.

2. When an allegation of abuse or neglect is accepted by the SCR, the Contractor shall cooperate in any steps deemed necessary by ACS to ensure the safety of the Foster Child, the Foster Child's siblings, or other children/youth in care. Where necessary, ACS shall, in cooperation with the Contractor, establish a plan for responding to the alleged abuse or neglect, and the Contractor shall carry out such plan.

Section 2.09 Family Team Conference Model and Child Safety Conferences

A. Family Team Conference Model: The Contractor shall utilize the FTC model as a fundamental approach to case planning. The FTC model is designed to engage families and community members in critical child welfare decisions related to safety, risk, well-being, and service planning. Decisions are made jointly and service plans are developed by the family, the social supports, community supports and service providers. The FTC model shall serve as the main tool for encouraging and supporting decision making for each case as well as a central mechanism for organizing and facilitating the Contractor's work with Foster Children and families, while focusing on safety and permanency. The Contractor shall partner with ACS in the FTC model. The Contractor's foster care program shall incorporate the principles and guidelines of the FTC model and ensure that FTCs promote practices that reflect ACS' core principles, thus enhancing children's safety and well-being. The Contractor shall conduct and/or participate in all FTC in accordance with ACS Policies, including the *Foster Care Quality and Assurance Standards*.

B. The Contractor shall conduct and/or participate in conferences as required by and in accordance with ACS Policies.

C. Other Types of Required Conferences

1. Parent to Parent Meetings: In accordance with ACS Policies, the Contractor shall facilitate a parent-to-parent meeting between the birth parents/caretakers and foster parents to occur immediately following the Placement Transition Meeting.

2. Initial Child Safety Conferences: Initial CSCs are held through the ACS Division of Child Protection for the purpose of making placement decisions, and are generally held after an emergency removal, because ACS Child Protective Services is considering a removal, or when some other legal intervention is deemed necessary to keep a Foster Child safe. All of the people who have an impact and/or can contribute to the safety of a Foster Child are gathered to meet and determine the most appropriate intervention for a Foster Child who is determined to be at risk and/or in imminent danger. When the Contractor already has a previous

relationship with a family involved in an initial CSC, the Contractor shall provide all information pertaining to the history of the family as it relates to ACS and the Contractor, making such information accessible for the initial CSC.

3. Follow-up Child Safety Conference: The follow-up CSC is a collaborative process through which families, their support system, various ACS staff, caseworkers, foster parents, service providers and other involved community partners meet to review the initial safety plan that developed at the initial CSC, the appropriateness of the Foster Child's placement, and to define a more comprehensive service plan for the family and permanency plan for the Foster Child. The Contractor shall attend all follow-up CSCs, notify foster parents about any scheduled follow-up CSC's, and educate foster parents about their role in the CSC. The Contractor shall be available to meet with ACS staff prior to follow-CSCs for purposes of preparation.

Section 2.10 Program Services

A. Coordination and Delivery of Services

1. Service Planning: The Contractor shall implement or arrange for the six (6) permissible permanency plans pursuant to the Law, which in order of consideration are:

- a. Returning the Foster Child to their birth parent/caretaker;
- b. Placement for adoption with the filing of a petition to terminate parental rights;
- c. Referral for legal guardianship;
- d. Permanent placement with a fit and willing relative;
- e. APLA - which can only be selected in the event there is a

compelling reason why none of the other possible permanency plans is in the Foster Child's best interests; or

- f. Adult Residential Care.

2. Service Plan Reviews: The Contractor shall conduct service plan reviews for each Foster Child in accordance with the Law including 18 NYCRR 428.9 and 18 NYCRR 430.12, or any successor or amended regulation.

3. Family Assessment and Service Plan: The Contractor shall create and maintain written service plans for each Foster Child, which shall be documented in the CNX system. The Contractor shall create service plans in conjunction with birth parents/caretakers, Foster Children, foster parents and others in accordance with the Law including 18 NYCRR Part 428 or any successor or amended regulation. The Contractor shall design service plans utilizing the FTC model, and shall specify the steps to be taken by each participant of the FTC, timeframes for accomplishment of goals, and concrete actions to monitor the progress of each Foster Child and their birth/caretaker families.

4. Permanency Planning: The Contractor shall work with appropriate individuals in each Foster Child's life to develop a plan to successfully discharge the Foster

Child with the preferred goal being reunification. The Contractor shall conduct all such permanency planning efforts in accordance with the provisions of the Law. For Foster Children that have not been reunified after fifteen (15) months in foster care, the Contractor shall commence a TPR proceeding, unless there is a compelling reason that indicates filing a TPR proceeding is not in the Foster Child's best interests.

5. Concurrent Planning: Unless determined to be inappropriate in a particular case, the Contractor shall engage in concurrent planning upon intake of each Foster Child for adoption or another custodial arrangement in addition to facilitating the formal service goal of reunification. The Contractor shall carry out such efforts to expedite alternate permanency goals in the event that reunification with birth parents/caretakers is ultimately determined not to be the appropriate plan and the circumstances result in the termination of the birth parent's/caretaker's parental rights.

6. Planning for Teens: The Contractor shall ensure that older Foster Children are given the opportunity and encouraged to be active participants in their own permanency plans. The goal of APLA shall only be used when there is a compelling reason why none of the other permanency plans are in the Foster Child's best interest and shall be used with a concurrent family-based plan. Furthermore, the goal of APLA can only be assigned after an FTC. The Contractor acknowledges that there is no age limit for adoption, which shall remain a viable option for adolescents and young adults. The Contractor shall inform all youth that are eighteen (18) years old and older that they can consent to their own adoption without a TPR. The Contractor shall provide support to and explore reasons and concerns offered by adolescents that are ambivalent about adoption or indicate that they do not wish to be adopted.

B. Casework Contacts

1. Foster Children, Birth Parents/Caretakers and Foster Parents: The Contractor shall conduct casework contacts with Foster Children, birth parents/caretakers or relatives, and foster parents in accordance with the Law including 18 NYCRR 441.21, 18 NYCRR 423.4 and 18 NYCRR 443.4 or any successor or amended regulations.

2. Discharge Resource: The Contractor shall use casework contacts as a forum for discussing and reviewing all changes of identified discharge resources with Foster Children and their birth parents/caretakers and foster and adoptive parents, if applicable.

Section 2.11 Transfer of the Foster Child

A. Transfer within the Contractor's Care: It may be necessary in order to meet the needs of a Foster Child to transfer the case within the Contractor's family foster care program. Transfers within the Contractor's care shall be made in accordance with ACS Policies and this Agreement.

B. Transfer Out of the Contractor's Care

1. It may be necessary in order to meet the needs of a Foster Child to transfer the case to another foster care provider. Transfers to another foster care provider shall be done in accordance with ACS Policies and this Agreement.

2. When a Foster Child is transferred to another foster care provider, the Contractor shall ensure that the Foster Child's health care is up to date, and that health records, including the Foster Child's medical passport, are fully updated, and that such information is shared with the foster care provider to whom the Foster Child has been transferred. The Contractor shall provide a discharge health summary and updated medical passport to the new foster care provider within fifteen (15) days of the transfer.

3. In the case of a planned transfer of a Foster Child to another foster care provider, the Contractor shall enable the Foster Child to participate in the plan to the extent that the Foster Child is of an age and capacity to engage in the planning process, including a discussion with the Foster Child about the reason for transfer, exploration of Foster Child's feeling about the move and as discussed in the FTC a visit by the Foster Child to the new Residential Care Facility or Foster Home prior to transfer.

4. Case planning responsibility for Foster Children who are transferred to residential care shall transfer to the residential care provider or be retained by the Contractor in accordance with ACS Policies.

5. If the Contractor maintains case planning of a Foster Child transferred out of the Contractor's care, the Contractor shall be responsible for performing all adoption, legal and recruitment activity in a timely fashion. The Contractor shall be responsible for completing the FASP, if the FASP is due, within forty five (45) days of transfer.

Section 2.12 Removal from a Foster Home

A. In accordance with ACS Policies, an FTC must be held prior to the removal of a Foster Child from a Foster Home, except where the health or safety of the Foster Child requires that the Foster Child be removed immediately from the Foster Home. If a decision is made at the FTC to proceed with the removal, the Contractor shall comply with all ACS Policies regarding such recommendation.

B. In the event the Foster Child must be removed immediately from the Foster Home due to health or safety issues, the Contractor shall conduct an FTC in accordance with ACS Policies.

Section 2.13 Case Closing Criteria and Procedures

A. Discharge from Foster Care

1. In accordance with ACS Policies, an FTC must be held before the Contractor can discharge a Foster Child from foster care. Before a Foster Child can be reunified with their birth/caretaker family, the Contractor shall first determine whether the birth parent(s)/caretaker(s) will be able to provide a safe and nurturing home for the Foster Child. The Contractor shall link birth families/caretakers with community-based services, such as after school programs, child care, support groups, and in-home supports.

2. Trial Discharge

a. i. During the trial discharge period, the Contractor shall monitor the home to assess the birth/caretaker family's interactions with the Foster Child; continue conversations with key service providers regarding the ongoing ability of the birth parents/caretakers to care safely for their child; and shall be responsible for returning the child/youth back into foster care if the child/youth cannot safely remain with his/her birth parents/caretakers. The Contractor shall provide continued casework contacts and home monitoring during trial discharge in accordance with ACS Policies. The Contractor shall provide a minimum of one (1) face-to-face casework contact and one (1) home monitoring visit per month during this period. The Contractor shall provide additional casework contacts as necessary in the event that more than one Foster Child is returning home; one or more Foster Children has special needs; one or more Foster Children is under the age of six (6) years old; one (1) or more Foster Children had previously been returned home and then re-entered foster care after a prior trial or final discharge; or birth parent(s)/caretaker(s) need advocacy and assistance in securing community-based services for themselves and/or their children.

ii. For trial discharges where Foster Children are reunified with a birth parent/caretaker or relative in cases where the Family Court has made a finding of abuse/maltreatment, the Contractor must ensure that an enhanced level of casework contact and/or monitoring is scheduled during the trial discharge period for a minimum of six (6) months. Enhanced monitoring shall include conferences with school or day care personnel, with medical providers, with other service providers, and family members and supporters.

b. In the event a Foster Child that has been reunified with his/her birth/caretaker family can no longer remain safely in the home, the Contractor shall make efforts to place the Foster Child with the foster parent that cared for the Foster Child prior to discharge when possible and appropriate.

B. Discharge to Adoption

1. Once a decision has been made to change a Foster Child's goal to adoption, the Contractor shall facilitate a conference with the Foster Child's foster parent concerning their desire to adopt the Foster Child. In the event the foster parent does not wish to

adopt, or if the Foster Child is not in a Foster Home setting, prior to freeing the Foster Child, the Contractor shall provide or arrange for recruiting efforts in accordance with ACS Policies.

2. When a Foster Child is to be discharged to adoption, the Contractor shall facilitate the transition process of the Foster Child into the adoptive family's home with efforts that shall include visits to the home, and regular monitoring of the placement. Prior to discharging a Foster Child, the Contractor shall ensure that both the Foster Child and adoptive family have the support they need to remain together as an intact family, including physical and mental health services, support groups, chemical dependency/use education and prevention, educational advocacy and assistance and other services. When appropriate, the Contractor shall also help families to engage with community-based programs.

C. Discharge to Another Planned Living Arrangement: When planning the discharge of a Foster Child to APLA, the Contractor shall provide the following:

1. The Foster Child has been connected to a caring adult who has made a commitment to the Foster Child emotional well-being beyond the age of twenty-one (21), including a demonstrated willingness to provide a place to live;
2. The Foster Child has safe and stable housing;
3. The Foster Child is in possession of needed government documents such as birth certificates or and social security cards and any immigration issues have been resolved to the extent possible;
4. The Foster Child is in possession of any other necessary documents as required;
5. The Foster Child is enrolled in an educational or vocational program, and/or is employed or has another stable source of income;
6. The Foster Child is referred to community-based medical care, mental health care, chemical dependency/use treatment, aftercare, and other clinical services as needed;
7. The Foster Child has medical benefits coverage, and all paperwork for transitioning to community Medicaid has been submitted; and
8. The Contractor shall provide guidance to young people who will require clinical supports through the application process for supportive housing or other services available through adult social service, health, and mental health systems.

D. Discharge to Adult Residential Care: When discharging a Foster Child to adult residential care, the Contractor shall facilitate the Foster Child's enrollment in Medicaid, Social Security, and other government assistance programs as early as possible and as soon as is appropriate. The Contractor shall:

1. Commence planning for discharge to adult residential care at or before the Foster Child's sixteenth (16th) birthday or as soon as practicable for a Foster Child who enters Foster Care at sixteen (16) years of age or older;

2. Refer the Foster Child to a facility and/or program that will be able to begin serving him/her upon discharge; and

3. Make best efforts to connect the Foster Child to a caring adult who is willing to make a commitment to the youth's future well-being beyond the age of twenty-one (21), despite the fact that the youth will not be living in the adult's home.

E. Unplanned Discharges: The Contractor shall document all unplanned discharges, including Foster Children missing from foster care, parental removal of voluntarily placed Foster Children, and court ordered discharges that are effective immediately. In the event of an unplanned discharge, the Contractor shall act to the full extent of its authority to ensure safety of the Foster Child through continued oversight, assessment, prudent decision-making and service planning until the final discharge. Documentation requirements include:

1. Assessment of circumstances under which Foster Child was discharged;

2. Assessment of Foster Child's current situation and identification of required services to prevent replacement; and

3. Diligent efforts to locate a Foster Child that is missing from foster care in accordance with ACS Policies.

Section 2.14 Discharge Planning, Aftercare and Final Discharge

A. Establishing Necessary Aftercare Services: As part of the discharge plan, the Contractor shall ensure that children and their families are connected to services and supports needed to maintain safety and stability and to continue progress made during the foster care placement. The Contractor shall develop and maintain linkage agreements with community based service providers in order to assist families and facilitate a smooth transition for Foster Children that are returning to their community of origin upon discharge. Among the services that should be considered are the OCFS Aftercare Service Programs.

B. Health Care Related Discharge Planning

1. The Contractor shall ensure that all Foster Children's health care is up-to-date and all referrals are followed up prior to discharge, including filing all paperwork for transitioning into community Medicaid. The Contractor shall ensure that health services are available to all Foster Children discharged from placement and help Foster Children obtain medical coverage by assisting with the Medicaid application process or linking Foster Children to low-premium health insurance options. The Contractor shall ensure that health records are up-to-date and all records are transferred to the discharge resource person and the post-discharge health services provider, as appropriate.

2. The Contractor shall work with the discharge resource person and/or the Foster Child, as age appropriate, to identify and establish a linkage with the Foster Child's post-discharge primary care provider and mental health provider, if applicable.

C. Bridges to Health Waiver Program: For Foster Children that are enrolled in B2H while in care and will continue to receive these services upon discharge, the Contractor shall ensure that the B2H Health Care Integration Provider is familiar with each Foster Child's discharge plan and working with the discharge resource to ensure an uninterrupted continuation of services. The Contractor shall actively participate in any B2H team meetings related to discharge planning.

D. Final Discharge: The Contractor may not final discharge a Foster Child without Family Court approval.

E. Post-Discharge: The Contractor shall provide post-discharge supervision in accordance with the Law and ACS Policies. The Contractor shall provide post-discharge services for a minimum of three (3) months and a maximum of six (6) months for Foster Children discharged from foster care with extensions provided when necessary and/or appropriate, including youth between the ages of eighteen (18) and (21) that are discharged to APLA.

Section 2.15 Services for Foster Children

A. Educational Services

1. Education Plan: The Contractor shall provide for or work in collaboration with an educational provider for the provision of an educational plan for each Foster Child that is based on an assessment of each Foster Child's educational level and complies with the Law, this Agreement and ACS Policies. The Contractor shall work with foster parents, birth/caretaker family members and school personnel to develop and monitor plans for each Foster Child's educational achievement.

2. Educational Liaison: The Contractor shall identify at least one (1) educational liaison with experience in education programming or a related field. The identified staff member(s) shall in conjunction with other Contractor staff as appropriate:

a. Be able to make use of educational data; any educational performance data provided by ACS throughout the year; and educational information obtained by the Contractor's caseworkers in support of best practice and case planning;

b. Work with caseworkers, foster parents and birth parents/caretakers to address any educational concerns; build and maintain collaborative relationships with the schools; provide advocacy on behalf of Foster Children; negotiate with appropriate school staff to ensure the implementation of recommended and appropriate educational services; and monitor the Foster Child's performance and experiences in school;

c. Make contact with each Foster Child's school within a short time of the Foster Child's entering foster care to track areas in need of improvement and develop educational plans; and

d. Give particular focus to helping Foster Children achieve the best possible educational outcome, including school stability, attendance, access to appropriate assessments and services, and academic progression.

3. Special Education Planning: The Contractor shall implement special education planning for a Foster Child when necessary.

a. The Contractor shall obtain copies of the Foster Child's IEP and evaluations conducted by or on behalf of the school, and incorporate the IEP goals into the Foster Child's overall service plan.

b. The Contractor shall advocate with schools for the provision of necessary educational services; obtain legal assistance from education advocacy programs; and make use of technical assistance from ACS and community resources when necessary.

4. Communication with Foster Child's School

a. The Contractor's staff shall meet regularly with school guidance counselors, teachers, and other school staff to determine that each Foster Child is developing at sufficient competency levels in the subjects of reading and mathematics.

b. The Contractor shall ensure that adolescents are receiving appropriate educational services placing them on track to achieve a Regent's high school diploma, except for situations where this standard is deemed unrealistic by an assessment of the particular Foster Child's capacity. In situations when attainment of a Regent's high school diploma is deemed to be unrealistic, the Contractor's staff shall assist the Foster Child and family in the development of an alternative educational plan to maximize the Foster Child's reading and mathematic competency.

c. The Contractor is encouraged to secure and/or provide tutorial services to every Foster Child whose reading or math scores are two (2) or more grades below their age-appropriate levels.

d. The Contractor shall engage each birth parent/caretaker as active participants in the Foster Child's education, and work to facilitate the birth parent/caretaker's involvement with the Foster Child's school.

B. Mental Health Services

1. Screenings: For each Foster Child, the Contractor shall complete age appropriate mental health screenings within thirty (30) days from the date of placement. In

addition to the initial mental health screenings, the Contractor shall conduct annual mental health screenings for each Foster Child. The mental health screening shall include a substance abuse screening in accordance with ACS Policies and Section 2.15(D) of this Part II entitled "Substance Abuse Services."

2. Treatment

a. If a Foster Child's psychological and/or psychiatric evaluation indicates a need for further mental health or behavioral health services, the Contractor shall arrange for follow-up treatment.

b. When deemed appropriate by a qualified mental health professional, the Contractor shall ensure that a mental health or behavioral health service treatment plan is developed, a copy of which shall be included in the case record of the Foster Child.

c. The Contractor shall ensure that mental health services are delivered by qualified licensed mental health providers, and that services are documented in the Uniform Case Record maintained by the Contractor.

3. The Contractor shall develop linkages with mental health support service providers, which can serve the Contractor's families, and provide birth parents/caretakers and foster parents with basic information about the Foster Child and his/her mental health. The Contractor shall make best efforts to ensure that birth parents/caretakers and foster parents are meaningfully engaged in the Foster Child's mental health treatment. The Contractor shall develop linkages with New York State Office of Mental Health home and community based services waiver programs for Foster Children with serious emotional disturbances.

C. Health Services

1. Continuum of Care: The Contractor shall ensure that each Foster Child's medical needs are met, and that Foster Children have access to a full range of specialty, sub-specialty, ancillary, dental and hospital services. The Contractor shall ensure that all medical services are provided directly or through linkage agreements with hospitals and specialty networks, and/or through primary care physicians who are affiliated and/or have admitting privileges with a hospital network. The Contractor shall ensure that both the Contractor's services and those provided through external sources shall be neighborhood-based for the Foster Children receiving medical treatment. The Contractor shall monitor and coordinate all healthcare services.

2. Medical Services: The Contractor shall coordinate all primary and sub-specialty care for Foster Children with providers that:

a. Offer health care services that are delivered or directed by a licensed medical professional;

- b. Can explain diagnoses and treatment modalities;
- c. Are accessible to each Foster Child;
- d. Offer continuity of care from infancy through adolescence and young adulthood; and
- e. Maintain a private and accessible centralized system in which a comprehensive record of the Foster Child's health information is stored and maintained.

3. Initial and Comprehensive Health and Development Screenings

- a. The Contractor shall ensure that each Foster Child receives an immediate health screening upon placement. For each Foster Child, the Contractor shall complete comprehensive health and development screenings within thirty (30) days from the date of placement.
- b. The comprehensive health and developmental screenings shall include an age appropriate vision, hearing and dentals assessment for each Foster Child. The Contractor shall ensure that the comprehensive health and development screening is performed by each Foster Child's identified primary care provider, that the immunization/vaccination status of each Foster Child is reviewed by appropriate healthcare professionals, and that the Foster Child's immunization/vaccination status is up-to-date.
- c. The Contractor shall implement a protocol to ensure that the ACS Medical Triage Packet for each Foster Child entering placement is reviewed by the Contractor's health services staff and incorporated into the Foster Child's medical records. The Contractor and its staff shall follow up and carry out recommendations contained in the ACS Medical Triage Packet.

4. Referral to Bridges to Health Waiver Program: The Contractor shall refer eligible Foster Children who are emotionally disturbed, developmentally disabled or medically fragile to the B2H program.

5. Referral to Specialized Services: When indicated to be appropriate by a medical or mental health assessment of a Foster Child, the Contractor shall facilitate the Foster Child's enrollment/referral to an appropriate community based clinical service provider. In the event the Contractor does not provide the specialized health or mental health services required by a Foster Child, the Contractor shall develop formal referral linkages with organizations that can provide such services. The Contractor shall also link with community-based chemical dependence/abuse programs to address the full range and family chemical dependency/use prevention, counseling, education, treatment and aftercare needs. The Contractor shall ensure that all Foster Children and birth/caretaker family members with chemical dependency/use disorders shall be referred to an OASAS-licensed treatment program.

6. Emergency Medical Services: The Contractor shall arrange for on-call availability of a primary care physician or appropriate coverage for any urgent medical and medical and mental health consultations sought by a caseworker or foster parent regarding a Foster Child on a twenty-four (24) hour a day, seven (7) days a week basis. The Contractor shall implement a protocol to ensure that all emergency care information is shared with foster care staff, social workers, foster parents, and all relevant medical and health care providers in a timely fashion.

7. Medication Management: The Contractor shall implement a medication management plan to serve as a guide for health services providers and a Foster Child's foster parent. The Contractor shall implement policies/procedures and provide adequate training to staff, foster parents, and birth parents/caretakers to assure proper and safe medication administration. The Contractor shall implement a specialized medication management plan for Foster Children requiring medication for chronic conditions, to ensure appropriate monitoring of dosage, dispensing, and duration. The Contractor shall ensure that all medication shall be kept in well-lit, locked storage areas that provide sufficient privacy for uninterrupted handling of medication. The Contractor shall also ensure that individual Foster Homes store any necessary medication in locked cabinets or labeled containers that are out of reach of Foster Children.

8. Consent: In accordance with the Law and ACS Policies including the *Administration for Children's Services Procedure No. 102/Bulletin 99-1 "Guidelines for Providing Medical Consents for Children in Foster Care"* as amended, the Contractor must first seek informed consent for medication provision to Foster Children from the birth parent(s)/caretaker(s), unless the birthparent(s)/caretaker(s) rights have been terminated or surrendered.

9. Psychotropic Medication

a. In addition to the elements of informed consent indicated above, informed consent prior to the administration of psychotropic medications shall include the following information from the prescribing psychiatrist: reasons for prescribing the medication; name and dosage of medication and the date prescribed; previous non-pharmacological interventions, and expected results of the medication and potential side effects. The Contractor shall ensure that psychiatrists prescribing psychotropic medication communicate regularly with any other clinicians providing mental health services to the Foster Child.

b. The Contractor shall ensure that every Foster Child shall be cleared medically with appropriate indicated lab tests performed in the twelve (12) week period preceding the administration of psychotropic medication. Thereafter, the prescribing physician or an equivalent shall observe all Foster Children receiving psychotropic medication at least once a month and document the observations in the case record.

c. The Contractor shall ensure that all Foster Children on psychotropic medication shall be given a physical examination and appropriate indicated lab tests at a minimum of every six (6) months or based on the frequency required by State health standards.

d. The Contractor shall maintain an up-to-date list of all current medications, a current treatment plan, and copies of medication consent forms for each Foster Child receiving such treatment. The Contractor shall ensure that the psychiatrist for a Foster Child receiving psychotropic medication(s) shall assume responsibility for medical aspects of mental health care provided by the Contractor in all phases of intervention. The Contractor shall ensure that all Foster Children prescribed psychotropic medication are required to receive concurrent non-medical mental health treatment, unless indicated by the Foster Child's condition or treatment needs.

D. Substance Abuse Services: The Contractor shall ensure that the mental health screening of each Foster Child includes questions and/or instruments related to the Foster Child's history of use or abuse of alcohol and/or other drugs. Such screenings shall be conducted in accordance with the Law. The Contractor shall ensure that Foster Children's experimenting with substances receive alcohol and other drug education and counseling, which shall be provided either on site or by referral to a community based OASAS licensed program. In the event there has been chemical dependency/use in a Foster Child's birth/caretaker family, the Foster Child shall be referred to a treatment program unless otherwise indicated. The Contractor shall offer services or a referral for services to birth parents/caretakers that require chemical dependence/use treatment.

E. Enrichment/Recreational Activities: The Contractor shall ensure that Foster Children are provided recreational opportunities pursuant to the Law including 18 NYCRR 442.20 or any successor or amended regulation.

F. Financial Literacy and Employment Training: The Contractor shall provide Foster Children with financial literacy and employment training where appropriate and in accordance with the Foster Child's age and development.

G. Legal Services: The Contractor shall submit timely and complete permanency reports to FCLS; attend Family Court proceedings; and comply with all Court orders. The Contractor shall ensure that staff with substantive knowledge of any given case situation appear in court when determined to be necessary by ACS. The Contractor shall provide FCLS attorneys with updated information including Foster Child status, location, assigned caseworker and supervisor. The Contractor shall maintain contact with FCLS attorneys to review any important developments, and communicate with lawyers for Foster Children as necessary, pursuant to ACS Policies. The Contractor and its staff must cooperate with FCLS attorneys during preparation for trial and court appearances. The Contractor shall retain legal counsel for TPRs as well as other situations where representation is needed at no additional costs to ACS.

H. Sexual Health Education and Services: The Contractor shall ensure that all Foster Children aged twelve (12) years old and over, and younger Foster Children who are sexually active, receive comprehensive information about family planning and sexual health issues, and have access to the full range of services including contraception, options counseling, and education and treatment related to sexually transmitted diseases and HIV/AIDS. The Contractor

shall also adhere to ACS Policies regarding comprehensive sexual health information and services for Foster Children.

I. Transportation: The Contractor shall ensure that transportation services are readily available to transport Foster Children to the hospital, medical and mental health appointments and other sub specialty providers as necessary.

J. Preparing Youth for Adulthood (PYA): The Contractor shall prepare each Foster Child that is fourteen (14) years of age and older, regardless of their permanency plan, for adulthood through classes, extra-curricular activities, individual instruction and other methods in accordance with the Law and ACS Policies. The Contractor shall make efforts ensure that Foster Children will: establish permanent connections with adults, always reside in stable living conditions, are afforded opportunities to advance their education and personal development, are encouraged to take increasing responsibility for their work and life decisions, have their individual needs met, and will receive ongoing support after aging out of foster care.

K. Housing Services: On behalf of Foster Children returning to birth parents/caretakers or transitioning to APLA or out of foster care, the Contractor and the Contractor's staff shall provide the following support services:

1. Understanding the community characteristics, resources, and needs, and successfully negotiating services for Foster Children within a neighborhood-based environment;
2. Helping Foster Children find adequate and affordable housing upon discharge from foster care;
3. Ensuring that all Foster Children have an appropriate and stable living arrangement available prior to discharge;
4. Develop relationships with existing housing providers and, whenever possible, develop its own housing resources; and
5. Finding stable housing – stable housing is defined as housing in which there is a reasonable expectation that the residence will remain accessible for the first twelve (12) months after discharge.

L. Family Planning Services: The Contractor shall notify all Foster Children twelve (12) years and older and Foster Children younger than twelve (12) years old who are known to be sexually active of the availability of family planning services within thirty (30) days after placement and every six (6) months thereafter, and provide them with such services upon request. The Contractor shall ensure that such notification is made both in writing and verbally and must be recorded in each Foster Child's medical record and in CNNX as part of the Foster Child's health history. The Contractor shall ensure that such notice complies with the Law including 18 NYCRR Part 463.2 or any successor or amended regulation. The notice must inform the Foster Child of the Foster Child's rights to confidential sexual and reproductive health

services and social, educational, health, and medical family planning services and shall not convey religious beliefs regarding family planning.

Section 2.16 Support Services for Birth Parents/Caretakers

A. Various Support Services: The Contractor shall facilitate supportive services for birth parents/caretakers, including but not limited to day care, parent training, support groups, advocacy, legal assistance, housing assistance and/or financial assistance where indicated through active referral and case planning by a caseworker. The Contractor shall provide birth parents/caretakers and other significant family members of the Foster Child with referrals and access to services to meet identified needs related to their medical and mental health, chemical dependency, domestic violence, and educational and/or vocational services in efforts to accomplish FASP goals. The Contractor shall support additional needs and presenting circumstances of birth parents/caretakers and extended family members to achieve successful reunification, including, but are not limited to:

1. Assistance with job training and finding employment;
2. Cultural and linguistic barriers to services;
3. Connections to community supports and services;
4. Immigration status services;
5. Education and information regarding the impact of incarceration on permanency plans;
6. Information regarding legal status pertaining to family court proceedings, including PINS petitions; and
7. Support for responding to children's/youth's sexual orientation and/or gender identity/gender expression.

B. Parenting Skills Education: The Contractor shall provide birth parents/caretakers with parenting skills training that is culturally sensitive and delivered in a manner that is responsive to the needs of the specific parent. The Contractor shall provide individualized parenting skills training in cases where group participation is not appropriate. The Contractor shall provide parenting skills training and psycho-education to birth parents/caretakers to address the issues that led to their child's/youth's placement in foster care, including the implementation and operation of an internal system to provide parent education, and/or identify external resources where the Contractor can refer birth parents/caretakers.

C. Domestic Violence Services: The Contractor shall conduct timely domestic violence assessments for each Foster Child and his/her family in accordance with ACS Policies. The Contractor shall refer all non-abusive birth parents/caretakers to appropriate services when appropriate, including domestic violence programs. When appropriate, the Contractor shall make referrals law enforcement agencies or the courts for legal intervention. The Contractor shall engage birth parent's/caretakers that are survivors of domestic violence in developing a strategy for increasing their safety and preparing in advance for the possibility of future violence. The Contractor shall take into account a family's history of domestic violence when planning or making recommendations about visitation between birth parents/caretakers and Foster Children, to ensure that such arrangements do not endanger the Foster Child or the non-abusive birth

parent/caretaker. The Contractor shall ensure that any Foster Child's visits with an abusive birth parent/caretaker shall be planned with the non-abusive birth parent/caretaker to minimize risk.

D. Alcohol and Substance Abuse Services: The Contractor shall conduct a risk behavior assessment of each birth parent/caretaker, which shall include the history of use, abuse or dependence of alcohol or other drugs. The Contractor shall make substance abuse/chemical dependency services available for any birth parent/caretaker who abuses alcohol or any other dependency inducing substance, either through the Contractor's own OASAS licensed program, if applicable, or by referral to a community-based OASAS licensed treatment provider. Once the Contractor has referred a parent for treatment, the Contractor shall communicate with the treatment provider about the birth parent's/caretaker's compliance and progress in treatment, and shall make necessary efforts to coordinate the delivery of services, aftercare, and discharge planning to ensure Foster Child safety and a supportive transition for reunification or other appropriate permanency goals.

E. Mental Health Services

1. The Contractor shall assess birth parents/caretakers to determine the presence of mental health issues, and provide or arrange for any necessary follow-up assessments, diagnoses, testing, psychotherapy, specialized therapies and interventions when appropriate. The Contractor shall refer birth parents/caretakers that require intensive mental health services to programs that are able to provide comprehensive services, including but not limited to mental health case management programs and assertive community treatment teams. The Contractor shall develop linkages with home and community based clinical service providers, mental health case management programs for adults.

2. The Contractor shall ensure that birth parents/caretakers receive education about parental mental health and its impact on children/youth.

3. The Contractor shall obtain appropriate releases for confidential and protected information, and maintain frequent communication with mental health providers in order to effectively coordinate services to families receiving them.

F. Housing and Housing Subsidy Services: The Contractor shall assess the need for and arrange for individuals and families to improve housing conditions. Services shall include, helping individuals and families obtain necessary home repairs; identifying and arranging for the correction of sub-standard rental housing conditions or code violations; finding suitable and adequate alternative housing; help in obtaining available and needed assistance; and relief from public agencies that regulate housing, including assistance in obtaining legal services when necessary. The Contractor shall refer mentally ill birth parents/caretakers that need supportive housing, as appropriate, to New York-New York III and/or other supportive programs as appropriate in order to reunite with their Foster Children. Whenever the Contractor determines that a lack of adequate housing is the primary factor preventing the discharge of a Foster Child, the Contractor shall determine if the family is otherwise eligible for a housing subsidy, and if so, make a referral to ACS for the provision of a housing subsidy in accordance with the Law.

G. Birth Parents/Caretakers of Foster Children with Serious Health and Mental Health Needs: The Contractor shall make support services available, directly or by referral, to foster parents and birth parents/caretakers that are caring for Foster Children with serious health and mental health needs.

H. Health Education: The Contractor shall provide birth parents/caretakers with health education focused on the specific needs of the Foster Child.

I. Foster Parents as Resources to Birth Parents/Caretakers: When appropriate, the Contractor shall encourage and provide foster parents with the ability to become actively involved with a Foster Child's birth/caretaker family before, during and after placement, with foster parents serving as resources to birth parents/caretakers.

J. Transportation: The Contractor shall provide birth parents/caretakers with transportation to office and family visits.

K. Involvement of Birth Parents/Caretakers in the Provision of Foster Care Services: The Contractor shall encourage involvement of birth parents/caretakers in the provision of services to their child/youth and document the Contractor's efforts to encourage birth parents/caretakers involvement as well as the actual involvement of the birth parents/caretakers in the provision of services to their child/youth. The Contractor shall ensure that the birth parents/caretakers are trained in applicable special needs curriculum and is involved in the case planning for their child/youth.

ARTICLE 3. LITIGATION CLAIMS INVOLVING FOSTER CHILDREN

Section 3.01 Litigation Claims Involving Foster Children

A. The Contractor shall notify the ACS Office of the General Counsel and ACS shall notify the Contractor of all litigation concerning a Foster Child within a reasonable time of acquiring this information and the Contractor shall forthwith provide ACS with all pertinent papers and documentation in advance of any pending court hearings or litigation. The Contractor shall provide its own legal representation when requested to do so by ACS. The Contractor shall, within three (3) business days, notify ACS in writing of the results of such court hearings or litigation.

B. In cases involving a Foster Child who is the subject of litigation, including writs of habeas corpus, ACS, after consultation with the Contractor, reserves the right to make an independent evaluation of the matter, including, but not limited to review of the Contractor's records and contacts with the Foster Child and/or the birth family/caretakers, foster family and significant others. The decision of ACS shall be binding on the Contractor in accordance with Article 4 of this Part II entitled "Responsibility and Authority of ACS and Resolution of Certain Disputes."

C. In a court proceeding involving a Foster Child, the Contractor may, with the consent of ACS, make such appeals as are provided by Law.

D. The Contractor shall expeditiously pursue appropriate legal action for the appointment of a guardian ad litem to protect the rights of a Foster Child with respect to all monetary benefit claims, including but not limited to tort, contract or inheritance claims. The Contractor, when appropriate, shall arrange for or assist a Foster Child in retaining legal counsel. The Contractor shall forthwith notify ACS of all circumstances necessitating legal representation of the Foster Child in all such instances, including but not limited to matters of a criminal nature or juvenile delinquency.

E. If a Foster Child commits an act in a Foster Home in which he/she is a resident which is a crime, or if committed by an adult would constitute a crime, the Contractor may report such act to the appropriate law enforcement officials. The Contractor shall report such acts in writing to the appropriate ACS personnel prior to taking any affirmative action with respect to such acts or as soon as possible thereafter.

ARTICLE 4. RESPONSIBILITY AND AUTHORITY OF ACS AND RESOLUTION OF CERTAIN DISPUTES

Section 4.01 Responsibility and Authority of ACS and Procedure for Final Decisions on Issues Related to Services Provided to the Client

A. It is recognized and agreed by the parties that the Commissioner has the ultimate responsibility for the protection and preservation of the welfare of each child receiving services under this Agreement. It is further recognized and agreed by the parties that the Commissioner has the ultimate authority for making all decisions relative to the welfare of such child and that the management and supervisory staff of ACS carries out such responsibilities on behalf of the Commissioner and in accordance with the authority vested in the Commissioner. It is further recognized and agreed that the Contractor's Board of Directors shall have responsibility and control of its day to day affairs and programs.

B. ACS and the Contractor agree that the fundamental purpose of this Agreement is to provide the best available services, care and treatment to Foster Children who are entrusted to the Contractor's care, and further to ensure that the health, welfare and fundamental rights of the Foster Children shall be the guiding principle for all decisions which affect their lives. The Contractor agrees to take such steps as may be necessary to ensure that the services, care, treatment and support, that Recipients of Services require, are provided.

C. Resolution of Disputes Between ACS and the Contractor: The parties agree to comply with the protocols and procedures set forth in this Section 4.01(C) in the event of a dispute between the Contractor's staff and ACS's staff relating to case planning, case practice and service planning, and positions to be taken at any court or administrative hearing. ACS and the Contractor acknowledge the need to address disputes governed by this Section expeditiously, and agree to cooperate with each other in such situations and/or inquiries to the fullest extent possible. Failure of the Contractor to report any dispute or submit an appeal within the time

frames indicated below shall constitute a waiver of any such dispute.

1. If after the performance of an internal review of its position, the Contractor's Executive Director disagrees with ACS on a decision relating to case planning, case practice and service planning, and/or a position to be taken at any court or administrative hearing, the Contractor shall present its position and recommendation in writing ("Notice of Dispute") within five (5) business days of the occurrence of an event giving rise to the dispute to the appropriate ACS Assistant/Associate Commissioner for the ACS organizational unit involved. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position. The ACS Assistant/Associate Commissioner will make every reasonable and good faith attempt to resolve the dispute after due consideration of the opinion, expertise and professional judgment of the Contractor, and render a written decision within five (5) business days from the date the dispute was referred to him/her. If the ACS Assistant/Associate Commissioner is unavailable to meet or unable to render a decision within such five (5) business days, the time for decision-making may be extended at ACS sole discretion.

2. If the dispute remains unresolved after the decision of the ACS Assistant/Associate Commissioner or undecided after thirty (30) days from the date the Contractor submitted the dispute to ACS, the Contractor, may appeal the decision or non-decision, as the case may be, by submitting its appeal in writing to the ACS Deputy Commissioner responsible for the ACS organizational unit involved within five (5) business days of (i) the Contractor's receipt of the ACS Assistant/Associate Commissioner's decision or (ii) thirty (30) days from the date the Contractor submitted the dispute to ACS. A copy of Contractor's appeal must be submitted simultaneously to the ACS Assistant/Associate Commissioner to whom the original dispute was referred. The written appeal must contain the following information and documentation (i) a brief statement of the substance of the dispute and the reason(s) the Contractor contends the dispute was wrongly decided by the ACS Assistant/Associate Commissioner; (ii) a copy of the decision of the ACS Assistant/Associate Commissioner, if any, and (iii) a copy of all materials submitted by the Contractor to the ACS Assistant or Associate Commissioner. The ACS Deputy Commissioner will make every reasonable and good faith attempt to resolve the dispute after due consideration of the opinion, expertise and professional judgment of the Contractor, and render a written decision within five (5) business days from the date the dispute was referred to him/her. If the ACS Deputy Commissioner is unavailable to meet or unable to render a decision within five (5) business days, the time for decision-making may be extended at ACS's sole discretion.

3. If the dispute remains unresolved after the decision of the ACS Deputy Commissioner or undecided after thirty (30) days from the date the Contractor submitted the dispute to the ACS Deputy Commissioner, the Contractor, may appeal the decision or non-decision, as the case may be, by submitting its final appeal in writing to the ACS Commissioner within five (5) business days of (i) the Contractor's receipt of the ACS Deputy Commissioner's decision or (ii) thirty (30) days from the date the Contractor submitted the dispute to the ACS Deputy Commissioner. The written final appeal must contain the following information and documentation (i) a brief statement of the substance of the dispute and the reason(s) the Contractor contends the dispute was wrongly decided by the ACS Assistant/Associate

Commissioner and the ACS Deputy Commissioner; (ii) a copy of the decisions of the ACS Assistant/Associate Commissioner and ACS Deputy Commissioner, if any, and (iii) a copy of all materials submitted by the Contractor to the ACS Assistant/Associate Commissioner and the ACS Deputy Commissioner. The Commissioner will make every reasonable and good faith attempt to promptly resolve the dispute after due consideration of the opinion, expertise and professional judgment of the Contractor.

4. The decision of the Commissioner shall be binding upon all parties.

5. At any stage during the above described procedure, where a decision is made which the Contractor does not wish to present to the next level of supervision such decision shall promptly be carried out by the Contractor to the extent that it is required to do so and to the extent that it is not required to carry out such decision, the Contractor shall not impede the carrying out of such decision.

6. During the pendency of the appeal procedure described above, the Contractor shall take no action which may undermine or impede the then current decision of ACS.

ARTICLE 5. PERSONNEL

Section 5.01 Staffing

A. The Contractor shall comply with the provisions contained in this Agreement in regard to its employees, staffing and personnel. Furthermore, the Contractor expressly covenants and agrees that any and all rights and powers conferred upon ACS thereby are intended by the parties to ensure proper and consistent personnel standards and procedures regarding the provision of services set forth in this Agreement, and do not vest in ACS any of the Contractor's rights or obligations in connection with its employees nor to give ACS any direct control over employees of the Contractor, nor to vest in the Contractor or any of its employees any rights as against ACS. The Contractor's personnel shall be employed on the basis of standards established by the Contractor, which have been approved by ACS and appropriate State agencies.

1. The Contractor shall make every effort to maintain sufficient qualified staff, facilities and equipment, in accordance with the Law and ACS Policies. The Contractor shall provide the services required pursuant to this Agreement and provide written notice to ACS within twenty four (24) hours whenever it is unable to do so.

2. The Contractor shall have the responsibility of recruiting, hiring, training, supervising and retaining appropriate personnel in accordance with Section 2.01 of this Part II entitled "General Requirements." All applicants shall complete employment applications which shall include inquiries relative to the applicant's most recent employers and prior criminal convictions. The use of this information in the applicant's evaluation shall be consistent with Article 23-A of the New York State Correction Law or any successor or amended Law.

B. Subject to the provisions of this Agreement, the Contractor through its executive

staff shall manage its affairs and programs and shall have the responsibility for the day-to-day provision of services to and for each Foster Child in accordance with this Agreement.

Section 5.02 Verification of Credentials, References and Screening Current and Prospective Employees

A. The Contractor shall be responsible for the verification of credentials and references and screening of all current and prospective employees. The Contractor shall comply with all applicable Laws when performing background checks, including providing appropriate notices where required in accordance with New York State General Business Law Sections 380-c (b) and 380-g(d). Such screening shall include but not be limited to:

1. Obtaining current background declarations indicating criminal conviction records, if any, and conducting a record review through the DCJS for current and prospective employees who have the potential for direct contact with children;
2. Inquiry to the SCR: The Contractor shall provide written notice to each prospective employee applying for a position in which there is potential for direct contact with children of its intention to make inquiry of the SCR;
3. For prospective employees, written inquiries to at least three (3) of the applicant's most recent prior employers, if applicable. The Contractor shall use its best efforts to obtain a response to such inquiry prior to placing the prospective employee on the payroll; and
4. Fingerprinting all prospective employees who have the potential for direct contact with children in accordance with SSL § 378-a and all other Laws. The fingerprinting processing fee may be paid either by the prospective employee or by the Contractor. In either case, the fee will not be paid or reimbursed by ACS.

B. The Contractor may retain an employee who has the potential for direct contact with children on a probationary basis in accordance with ACS Policies, pending the results of the record review conducted by DCJS and the SCR. For such probationary hires, the Contractor shall keep in confidential personnel files documentation describing supervision and measures taken to ensure the safety of children with whom such staff is working, pending background clearance. The Contractor shall notify ACS of decisions to hire employees on a probationary basis pending the results of a criminal background check.

C. The Contractor shall make employment decisions concerning prospective employees with a criminal record in accordance with the Law. The Contractor will refer to the New York State Correction Law Article # 23-A, §750-§755, when considering applicants with previous criminal convictions. In the event the Contractor hires a candidate with a criminal record, the Contractor shall document the basis for the decision to hire such employee, which shall be signed and approved by the Contractor's executive director. The Contractor shall inform ACS of decisions to hire employees with criminal records.

Section 5.03 Suspected Abuse or Maltreatment of Children/Youth

A. If the Contractor has reasonable cause to suspect that an employee of the Contractor working or providing services in connection with this Agreement has abused, maltreated, neglected, assaulted or endangered the welfare of any child/youth, the Contractor shall, immediately report such belief to the SCR, and take appropriate action to remove the employee from the proximity of all children/youth while the matter is being investigated. The Contractor shall immediately notify ACS of any Contractor reports made to the SCR regarding employees of the Contractor.

B. ACS reserves the right to conduct its own investigation with regard to any employee of the Contractor for which the Contractor has filed an SCR report. The Contractor agrees to fully cooperate with any such investigation.

C. 1. If there is a finding of indicated abuse, maltreatment or neglect by the Contractor's employee, the Contractor shall immediately take action to ensure the permanent removal of the employee from the proximity of all children/youth, and ACS and/or the Contractor may take appropriate legal action or disciplinary action, if necessary, to accomplish such removal.

2. If, notwithstanding the finding of indicated abuse, maltreatment or neglect by the Contractor's employee in question, the Contractor believes that there are special mitigating circumstances in the matter, the Contractor shall promptly submit a written request to the Commissioner for a review of the matter. This request shall contain a complete explanation, including all pertinent documentation, and the actions the Contractor intends to take, in regard to the employee. During the review process the employee shall remain removed from proximity to all children/youth. The Commissioner or his/her designee shall review the matter and may meet with the Contractor and/or the employee and shall promptly notify the Contractor of the Commissioner's decision concerning the permanent removal of the employee from the proximity of all children/youth.

Section 5.04 Employee Review

A. ACS reserves the right to request that the Contractor review the performance of any employee who has direct contact with children and/or families referred by ACS pursuant to this Agreement. Upon completion of the review, the Contractor shall take appropriate action, with respect to the employee, and thereafter notify ACS of such action.

B. The Contractor reserves the right to request that ACS review the performance of any employee who has direct contact with children and/or families referred by ACS pursuant to this Agreement. Upon completion of the review, ACS shall take appropriate action, with respect to the employee, and thereafter notify the Contractor of such action.

Section 5.05 Hiring and Dismissal of Certain Employees

The Contractor shall advise the Commissioner reasonably in advance in writing, whenever the Contractor hires or dismisses a chief executive officer, chief fiscal officer, or program director of foster care services. The Contractor shall include in the notice of the dismissal of a chief executive officer, chief fiscal officer, or program director of foster care services the reason(s) for the dismissal. The Commissioner shall keep all such information confidential, except that the Commissioner may make disclosures to persons who have a legally cognizable interest in said information. Additionally, the Contractor shall forward a copy of the particular resume(s) to ACS for new hires in accordance with ACS Policies.

Section 5.06 Collective Bargaining

The Contractor acknowledges that neither the City nor ACS is responsible or shall be liable for any obligations contained in any agreement into which Contractor or a representative of Contractor has entered concerning the collective bargaining rights or benefits of its employees paid in full or in part by funds provided through this Agreement. Furthermore, the Contractor agrees to abide by all applicable Laws governing the use of funds in connection with union activities.

ARTICLE 6. RECORDKEEPING AND REPORTING

Section 6.01 General

A. The Contractor shall maintain adequate program files and fiscal records, and shall ensure that its staff follow appropriate record keeping practices and procedures for all records in the Contractor's possession. The Contractor's records shall comply with all Laws and ACS Policies regarding recordkeeping. The Contractor shall keep separate files and records for each Recipient of Service so that they may be readily identifiable from those relating to other activities of the Contractor. In addition to information normally kept by the Contractor in individual files, such as basic information about the individual, describing and recording each use of the services by the individual, and the individual's progress, the Contractor shall include such other information in individual files as ACS may reasonably require. The files and records of each recipient shall be made available to ACS at reasonable times upon reasonable notice and request.

B. The Contractor shall upon reasonable notice and request by ACS, provide information and records relating to Foster Children in the custody of ACS. ACS shall have access to information and records including, but not limited to, information and records pertaining to programs, birth parents/caretakers, foster parents, Foster Children and compliance with legally mandated activities. The Contractor shall collect and maintain all information and records reasonably requested by ACS.

C. The Contractor shall ensure that its staff, consultants and subcontractors shall at reasonable times and upon reasonable notice, be made available to ACS or its counsel upon request for consultation either at the office of the Contractor or at the offices of ACS.

Section 6.02 Statistical Records

A. The Contractor agrees to produce and maintain reasonable program statistical records as required by ACS and to produce program narrative and statistical data at times prescribed by and on forms furnished by ACS. ACS shall use its best efforts to minimize duplicative record requests.

B. The Contractor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at times prescribed by and on forms furnished by ACS.

Section 6.03 Case Records

A. The Contractor shall maintain adequate case files and shall ensure that staff follow appropriate record-keeping and retention practices and procedures in a manner that is in compliance with and supports all Laws and is consistent with ACS Policies. The Contractor shall cooperate with ACS assessment and evaluation systems. The Contractor shall ensure that its appropriate staff are trained in the use of CNNX, LTS, CCRS, and SSPS and any subsequent tracking systems or databases as required by ACS, OCFS or the Law. The Contractor shall ensure the caseworker, shall have primary responsibility for the development, documentation and maintenance of all case records within his/her caseload. The Contractor's policies and procedures shall clearly define the requirements of the caseworker and child care worker in documenting and maintaining case records, including required forms, content and format of other documentation, and storage. The Contractor shall ensure that primary case record information is documented and maintained in CNNX. The Contractor shall maintain hard copies of all other information that cannot be captured in CNNX in physical case records. The Contractor shall ensure that case records contain: demographic and contact information; the reason for a request or referral for services; up-to-date assessments; copies of all signed consent forms; a description of services provided by referral; and documentation of routine supervisory review. The Contractor's documentation procedures shall also define the documentation requirements for all service providers, including but not limited to, medical, psychiatric, chemical dependency/use prevention, and treatment and after care providers as well as education professionals.

B. CONNECTIONS (CNNX): The Contractor shall ensure that relevant staff members are knowledgeable and proficient in CNNX. The Contractor shall document all processes and activities into CNNX that pertain to Foster Children and their families, including case information, health, education and permanency hearing reports. The Contractor shall ensure that all relevant staff receives the necessary training, and are informed of pertinent policies and procedures regarding CNNX.

C. Family Case Record/Child Case Record: The Contractor shall maintain a physical case record for each Foster Child, which shall document all services and treatment provided to each Foster Child. The case record shall be indexed to reflect the organization and documentation in the record. The Contractor shall also retain and maintain supportive records and documents, including but not limited to, applications for services, assessments, evaluations, education and medical reports, legal documents and collateral contacts. The Contractor shall

maintain case records in accordance with the Law including 18 NYCRR Part 428 or any successor or amended regulations.

D. Foster Parent Case Record: The Contractor shall maintain a detailed and current foster parent case record, which shall be updated as needed. The Contractor shall maintain foster parent records in accordance with the Law including 18 NYCRR 443.2(f) or any successor or amended regulation. The Contractor shall maintain the foster parent case record in accordance with the Law and ACS Policies including the *Foster Care Quality Assurance Standards*.

Section 6.04 Medical Records and Related Documentation

A. Authorization for Release of Health Information and Consent Form: The Contractor shall request written authorization from birth parents/caretakers for medical care including medical and/or psychological assessments, immunizations and medical treatment, and for emergency medical or surgical care at the time the care is necessary, at the time of placement for cases where the Foster Child is voluntarily placed, or within ten (10) days after admission into care in emergency or court-ordered placements. In those instances when birth parents/caretakers are unable, unavailable, or unwilling to sign a release, the Contractor shall ensure that the case planner complies with the Law and ACS Policies with regard to obtaining medical consent. The Contractor shall make diligent efforts to contact birth parents/caretakers for consent whenever there is a significant change in the health status of the Foster Child requiring non-routine medical attention, surgery or administration of psychotropic medication. The Contractor shall ensure that all consent forms are retained in the medical record and CNNX health narrative as part of the Foster Child's health history.

B. Health Records and Documentation: The Contractor shall maintain complete health information in each Foster Child's CNNX case record and shall comply with all Laws and ACS Policies. In addition to the requirements for the medical documentation contained in CNNX, the Contractor shall establish a comprehensive health history for each Foster Child by working with the birth family/caretaker and known previous health providers for each Foster Child. The medical record shall include, but not be limited to: a complete medical history, dental history, immunization record, an admission physical exam and all subsequent physical exams, records of all medical treatment, consent(s) for treatment, and any other appropriate documentation related to medications and procedures, diagnostic and therapeutic. The Contractor shall comply with all timelines for collection of such information as required by ACS Policies. In efforts to maintain each Foster Child's confidentiality and to maximize the delivery of effective health care services and health care coordination, the Contractor shall ensure that all child welfare health service providers responsible for a Foster Child's care receive health information about a Foster Child's health status and history on a "need to know" basis, and as appropriate. The Contractor shall maintain each Foster Child's individual medical history in an organized and readily transferable manner that details all critical information regarding the Foster Child's health status and history.

1. Physical Examination: The Contractor shall document the results of each Foster Child's physical examinations using the Child's Health Record, Form DSS-711 or a comparable form. The Contractor shall include in this form the results of initial and periodic

health examinations given to each Foster Child. The Contractor shall ensure that the Child's Health Record contains a section describing a plan for each Foster Child's health needs and documents all on-going medical treatment. The Contractor shall ensure that the Child's Health Record includes information on all specialty referrals, copies of laboratory results, and summary discharge notes from any hospitalizations. The Contractor shall include the Foster Child's CIN in each Foster Child's health record. The Contractor shall comply with the Law including 18 NYCRR 441.22 or any successor or amended regulation with regard to health and medical services for Foster Children.

2. Continuing Health History: The Contractor shall maintain a hard copy of each Foster Child's health history and other relevant health documents that cannot be recorded in CNNX.

3. Health Summary Form: The Contractor shall maintain a health summary form for each Foster Child. The health summary shall include results of the initial comprehensive health and mental health examinations; substance use/abuse status; health care providers; dental, vision and hearing test results; current immunization history and any information regarding follow up referrals and evaluations. The Contractor shall complete the summary form during the first six (6) months of placement. The Contractor shall update the health summary form every six (6) months the Foster Child remains in care in conjunction with the FASP.

4. Medical Passport: The Contractor shall maintain a medical passport for each Foster Child and ensure that it is updated by health service providers with each visit. The medical passport shall not be used as a substitute for the full medical record. The Contractor shall keep a copy of each Foster Child's most up-to-date medical passport in their medical records. The Contractor shall ensure that the medical passport is updated as often as possible and at minimum of every six (6) months.

C. Mental Health Screening and Treatment Documentation

1. Medication-Related Documentation: The Contractor shall ensure that all medications administered to Foster Children while in care are documented in each Foster Child's medical record. Such information shall include, but not be limited to:

- a. The name of the medication(s) currently being taken by the Foster Child, including dose and dosage schedule;
- b. The purpose of the medication(s) or condition/diagnosis being treated or managed;
- c. The name and credentials of the prescriber;
- d. Documentation of appropriate consent and consent procedures followed by the provider;

e. All associated health facility visits, specialty and subspecialty care associated with the medication;

f. Documentation that the Contractor has provided appropriate administration of the medication;

g. Documentation of non-compliance to prescribed medications;

h. Documentation of any allergies or adverse reactions that the Foster Child may have had to any past medication(s), and the incident report associated with each adverse reaction while the Foster Child was in the Contractor's care; and

i. Documentation of training on medication administration for all foster care parents including Model Approach to Partnerships in Parenting (MAPP) training.

2. Psychotropic Medication Documentation: The Contractor shall ensure that the following information is documented for Foster Children receiving psychotropic medication:

a. Documentation of appropriate informed consent procedures followed by the Contractor prior to initial administration of the medication;

b. Documentation of appropriate initial and follow-up laboratory exams;

c. Documentation of recent one (1) month physical exam prior to initiation/change of treatment regimen;

d. Documentation of monthly evaluation or appropriate explanation for exception to this requirement by a child psychiatrist or other appropriate health care provider; and

e. Documentation of appropriate monitoring of the Foster Child's reaction to any treatment or medication.

Section 6.05 Independent Reporting

A. The Contractor shall notify ACS immediately in the event of a situation, which presents an imminent danger to the health or welfare of any Foster Child. For purposes of this clause, immediate notice shall mean providing notice to ACS as soon as practicably possible without placing the Foster Child in any further danger.

B. The Contractor shall report fatalities, serious accidents and incidents, and injuries of any Foster Child to ACS within twenty-four (24) hours of receiving notice. The Contractor shall immediately send notification to ACS's Shared Services Response Team upon knowledge of any such incident, and shall follow up with a comprehensive report within twenty-

four (24) hours of the initial notification. The Contractor shall comply with the Law with regarding to reporting including 18 NYCRR 441.7 and 18 NYCRR 441.8 or any successor or amended regulation. The Contractor shall submit a copy of each critical incident report within twenty-four (24) hours of completion of the report to its commercial general liability insurance carrier and to the City of New York Law Department Affirmative Litigation Division.

Section 6.06 Family Planning Services

The Contractor shall ensure that the notification of the availability of family planning services pursuant to Section 2.15(L) of this Part II entitled "Family Planning Services" is recorded in each Foster Child's medical record and in CNNX as part of the Foster Child's health history.

Section 6.07 Court Documents

Upon request, the Contractor shall furnish documents to FCLS attorneys for their work on cases involving Foster Children. Such requests for documents may include, but not be limited to, case records, FTC and other conference summaries, FASPs, notes, medical records and evaluations, as well as written reports prepared specifically for the Court. The Contractor shall ensure that any documents are furnished, whenever possible, within a reasonable time in advance of the Court hearing, giving the attorney an opportunity to discuss the use of the documents with the Contractor. The Contractor shall also submit PH reports to FCLS attorneys pursuant to ACS Policies and established timeframes.

Section 6.08 Independent Audit Reports

If the Contractor has an independent audit performed of the records relating to this Agreement, a true copy of the audit report shall be provided to ACS within thirty (30) days after acceptance by the Contractor.

Section 6.09 Disposal of Confidential Data

The Contractor acknowledges that each Foster Child's case record and any documents contained therein are confidential. Other confidential items include, but are not limited to, documents containing: child/youth and family names, addresses, social security numbers, case information, details of allegations of abuse, confidential employee information, medical information, and other personal information. The Contractor shall comply with all Laws regarding record retention and disposal.

Section 6.10 Record Keeping Systems Maintenance and Utilization

A. Legal Tracking System (LTS): The Contractor shall designate at least one (1) LTS liaison for all LTS-related issues and updates, including PH reports. The Contractor shall ensure that the LTS Liaison is able to communicate regularly with designated individuals at ACS when necessary. The Contractor shall use LTS during the regular course of business to carry out duties which include but are not limited to, reviewing Court orders, hearing outcomes, and attorneys'

court action summaries. The Contractor shall ensure that manager and supervisor level staff run and review LTS reports about PH report timeliness and submission rates, in addition to utilizing other management tools available in LTS in efforts to improve the delivery of program services. The Contractor shall follow all applicable ACS Policies and OCFS procedures when submitting PH reports from CNNX to FCLS attorneys. The Contractor shall update CNNX as soon as possible regarding changes in assigned caseworker or other information as listed in LTS. The Contractor shall not disclose any information contained in LTS to third parties, absent instruction from ACS.

B. Child Care Review System (CCRS): CCRS is a statewide system used to track Foster Children as well as PINS. ACS shall open a CCRS case within three (3) business days of a Foster Child's placement. ACS and the Contractor shall mutually strive to keep CCRS accurate and timely at all times. Once ACS opens a CCRS case, the Contractor shall enter data related to any Foster Child absence and return to care, inter- and intra agency transfers, and adoption codes.

Section 6.11 Change in Corporate Structure

Any contemplated fundamental change in the Contractor's corporate structure (such as merger with another entity or fundamental changes in governance) which will affect the provision of services covered by this Agreement shall be reported to ACS in writing at the earliest feasible time, but in no case later than ninety (90) days prior to the contemplated change. In the event that a merger is contemplated, the Contractor shall notify ACS when a plan of merger is filed with a state agency.

ARTICLE 7. CONTRACTOR'S STANDARDS AND PROCEDURES

Section 7.01 Standards and Procedures

A. The Contractor agrees to comply with the following requirements and expressly covenants and agrees that any and all rights and powers conferred upon ACS in this Agreement are intended by the parties to ensure proper and consistent personnel standards and procedures regarding Foster Care services and Recipients of Services which constitute the subject matter of this Agreement, and are not intended to vest ACS with any of the Contractor's rights or obligations in connection with its employees nor to give ACS any direct control over such employees of the Contractor, nor to vest in the Contractor or any of its employees any rights as against ACS.

B. The Contractor shall create and maintain written plans that detail all management systems and the manner in which they are designed to ensure proper planning and implementation of programmatic operations and fiscal administrative policies and procedures ("Standards and Procedures"). The Contractor's Standards and Procedures shall include the records and maintenance of: personnel management systems; fiscal management systems, including procurement and cash management systems; facility management systems; program management systems; and parents' decision-making systems.

C. The Contractor shall submit to ACS immediately upon ACS' request a copy of all Standards and Procedures requested by ACS. The Standards and Procedures requested by ACS may include but not be limited to:

1. Organizational papers such as a true copy of the Certificates of Incorporation filed with the New York Secretary of State, by-laws, and any other related documentation reasonably requested by ACS;
2. Personnel policy practices including such matters as job descriptions and qualification requirements, hiring and selection practice, personnel grievance procedures, benefits and leave, salary increases, holiday schedules and other related matters;
3. Purchasing policy and procedures;
4. Fiscal Policies and Procedures;
5. Intake and Planning Procedures; and
6. Completed Safety Plan that provides specific and detailed procedures for responding to a range of incidents.

D. ACS may direct the Contractor at any time, and from time to time, to rescind, modify or add to its Standards and Procedures to bring the Standards and Procedures in compliance with this Agreement, the Law and ACS Policies.

Section 7.02 Client Grievance Procedures

A. The Contractor shall establish procedures through which Recipients of Services may present complaints and grievances about the provision of any service under this Agreement. The Contractor shall advise Recipients of Services of these procedures and of their right to appeal thereafter to ACS.

B. If the Contractor is unable to resolve the problem and the Recipient of Service initiates an appeal to ACS, the Contractor shall forward a summary of the relevant information to ACS. ACS shall confer with all the parties, either separately or jointly, and may request such additional information and material, as it deems necessary.

C. If the Recipient of Service and the Contractor can not come to an agreement concerning the Recipient's complaints and grievances, ACS shall have the right to make a final determination pursuant to Article 4 of this Part II entitled "Responsibility and Authority of ACS and Resolution of Certain Disputes."

D. In circumstances where the Law or due process requires, the Contractor shall advise the Recipient of Service of his/her right to request a fair hearing by OCFS.

Section 7.03 Security and Emergency Plan

A. Prior to the commencement of services under this Agreement, Contractor shall submit for ACS' review and approval a written plan to provide for the safety and security of clients, participants, staff, and the Contractor's facility, which shall include emergency procedures, including first aid and cardiopulmonary resuscitation training; evacuation procedures; and the identification of the means by which safety and security of clients, participants, staff, and the Contractor's facility will be maintained throughout the term of this Agreement. Such a plan will insure its clients' basic needs are met in the event of a City-wide emergency or natural and man-made disasters, including extremes of weather, blackouts and other regional and national emergencies. The Contractor shall maintain a file of emergency contacts for each client and participant, which shall include the names, addresses, telephone numbers, and locations where such contacts can be reached. Submission of a security plan applying to all of the Contractor's operations rather than specifically to the City-funded operations shall be sufficient to comply with the terms of this requirement. The provisions of this Section shall not apply to programs housed in courts or other City-operated locations.

B. In the event that a State of Emergency (SOE) is declared by the Mayor of the City, the City may suspend Contractor's normal operations until further notice. No damages shall be assessed for suspension of normal services during this time. All other terms and conditions of this Agreement shall remain in effect, except as modified by a contract amendment registered pursuant to New York City Charter §328 or other appropriate contract action. The Contractor may, at the request of and in a manner determined by ACS, assist ACS in carrying out emergency procedures during a State of Emergency. Emergency procedures shall remain in effect until the Mayor has determined that the SOE has expired. In consideration thereof, the City agrees to indemnify the Contractor against all claims by third parties arising out of the actions of its employees during the SOE that are directed by the City and not otherwise required to be performed under this Agreement, except for those arising out of the employees' gross negligence or intentional misconduct.

Section 7.04 Continuity of Operations Plan

Prior to the commencement of services under this Agreement, Contractor shall submit for ACS' review and approval a written Continuity of Operations Plan (COOP) for its business which indicates its ability to continue the provision of essential services to ACS in the event that a State of Emergency is declared by the Mayor. The Contractor should seek guidance from ACS on how to develop a COOP plan. A COOP plan includes, but is not limited to: the identification of an alternate site of business; appointment of alternate personnel for identified essential staff; development of protocols for the safekeeping of vital business records; and, a transportation contingency plan for its employees.

ARTICLE 8. FISCAL PROVISIONS

Section 8.01 General

Should the needs of the City child welfare system call for changes to this Agreement, ACS

reserves the right to select a different payment structure. ACS would do so with consideration of the needs of the Contractor and would attempt to integrate the Contractor's concerns into any new payment structure that might be introduced.

Section 8.02 Payment

A. ACS payment to the Contractor is subject to the terms of this Agreement, ACS receipt of funds and cost allocation using an appropriate cost allocation plan. ACS shall not pay the Contractor for any child/youth not placed in accordance with this Agreement.

B. ACS agrees to pay to the Contractor on a monthly basis an amount based on an administrative per diem rate set by ACS ("Per Diem Rate") and a foster parent stipend rate as set by OCFS and the Budget contained in Attachment IV to this Agreement (except as Attachment IV may be subsequently amended or modified by ACS in accordance with adjustments in the Per Diem Rate and adjustments in the ACS budget allocation) which is equal to the applicable Per Diem Rate and the foster parent stipend rate as multiplied by each Day of Care provided by the Contractor and approved by ACS for each Foster Child in the Contractor's care. The Contractor shall not be paid for any Foster Child who has been transferred to another provider or any case that is in a Suspended Payment status in accordance with the Fiscal Manual. ACS shall make the monthly payments to the Contractor after the submission of appropriate documentation as ACS may require and after the Contractor's electronic submission of Days of Care to SSPS which must be completed by the seventh (7th) business day before the end of the following month. Such payment shall be made in accordance with ACS Policies.

C. Notwithstanding anything to the contrary contained in this Agreement, payment for services provided by the Contractor pursuant to this Agreement must be authorized by ACS and shall be effective from the date the service was commenced and authorized by ACS.

D. In the event the Contractor fails to comply with the Fiscal Manual regarding approval of special and exceptional need rates, ACS may disallow the rate and recoup any amount overpaid to the Contractor in connection with the Contractor's non-compliance.

Section 8.03 Statewide Service Payment System

SSPS is a statewide payment system used to process Per Diem Rate payment for services provided to Foster Children. When submitting requests for per diem payment for services, the Contractor shall:

1. Submit an initial request for payment of services for each month by the fifth (5th) business day of the following month.
2. Submit the final request for payment of services for each month by the seventh (7th) business day before the end of the following month.
3. Work with ACS staff to reconcile any discrepancies.

Section 8.04 Advance

The amount of any advance to be paid to Contractor under this Agreement shall be determined solely by ACS in accordance with the Fiscal Manual and any applicable Comptroller directives. The funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred pursuant to the Budget.

Section 8.05 Cost of Living Increases

Where the Contractor's industry has experienced an increase in costs (e.g, salary, wage or fringe benefit cost of living increases, a change in the prevailing or living wage, a renegotiated collective bargaining agreement, an industry-wide increase in the Producer Price Index (PPI) for fuel or energy) that exceeds the Budget, and the Office of Management and Budget (OMB) or another independent agency has determined in writing that additional funds will be made available to a City agency for the class of contracts pursuant to which the Contractor provides the same or substantially similar services, then the Department shall reimburse the Contractor for such increases in costs to the extent that such increases have been authorized by the City for contracts within such class of contracts and to the extent that funds are appropriated for such purposes. Any cost of living increase will not be effective unless and until an amendment to the contract is registered pursuant to New York City Charter §328.

Section 8.06 Special Payments, Miscellaneous Expenses and Additional Funding**A. Special Payments**

1. ACS shall in accordance with the Law and the Fiscal Manual including the *Administration for Children's Services Payment Bulletin FC 07-12* or any amended or succeeding bulletin ("Payment Bulletin") reimburse the Contractor for Special Payments expenses listed specifically in the Payment Bulletin ("Special Payments") to the extent that such expenses comply with this Agreement and the Fiscal Manual including the Payment Bulletin.

2. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(A) is subject to the following:

- a. The allocation for Special Payments as provided in the Budget;
- b. The Contractor's submission of the proposed Special Payment if required by the Payment Bulletin and ACS advanced approval of the expense if required by the Payment Bulletin; and
- c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

B. Miscellaneous Expenses

1. ACS may, in accordance with this Agreement and the Fiscal Manual including the Payment Bulletin, reimburse the Contractor for expenses which are not specifically listed in the Payment Bulletin and/or expenses which are not included in the Special Payment allocation.

2. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(B) is subject to the following:

a. The allocation for Miscellaneous Expenses as provided in the Budget;

b. As required by this Agreement, ACS Policies and/or the Fiscal Manual, the Contractor's submission of the proposed expense to ACS and ACS advanced approval of the expense; and

c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. The Contractor must submit invoices/requests for reimbursement to ACS by the deadline for submission of invoices/requests for reimbursement outlined in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

C. Preparing Youth for Adulthood (PYA) Funding and Reinvestment Funding

1. General: Notwithstanding any provision contained in this Agreement, ACS may in ACS' sole discretion provide the Contractor with funding for the following initiatives: PYA which supports Foster Children in and transitioning from foster care and reinvestment funding ("Reinvestment Funding") to strengthen the Contractor's family foster care program. The Contractor shall use this additional funding, if any, in accordance with this Agreement, ACS Policies, the Fiscal Manual and the Law and such additional funding shall be subject to cost allocation.

2. PYA Funding: The Contractor shall use PYA Funding to support special services and supports for Foster Children who are ages fourteen (14) years of age and older consistent with this Agreement, ACS Policies, and the Fiscal Manual.

3. Reinvestment Funding: The Contractor shall use Reinvestment Funding to support permanency for children/youth including aftercare preparation and services to help expedite and stabilize permanency for Foster Children and to provide services to Foster Children who are ages twelve (12) years of age and older to reduce movements within Foster Care and step-ups to residential care.

4. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(C) is subject to the following:

a. The allocations for PYA and Reinvestment as they appear in the Budget;

b. As required by this Agreement, ACS Policies, and/or the Fiscal Manual, the Contractor's submission of the proposed expense to ACS and ACS advanced approval of the expense; and

c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. The Contractor must submit invoices/requests for reimbursement to ACS by the deadline for submission of invoices/requests for reimbursement outlined in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

5. If PYA or Reinvestment Funding is reduced in any fiscal year for reasons other than census reduction, ACS shall discuss the scope of the PYA or reinvestment program, as the case may be, with the Contractor's representative organization.

D. Additional Funding

1. ACS may from time to time and in ACS' sole discretion provide the Contractor with additional funding for ACS specified program initiatives. The Contractor shall use this additional funding, if any, in accordance with this Agreement, ACS Policies and the Law and such additional funding shall be subject to cost allocation.

2. ACS payment/reimbursement to the Contractor pursuant to this Section 8.06(D) is subject to the following:

a. The specified additional funding allocation as provided in the Budget;

b. The Contractor's submission of the proposed expense to ACS and ACS advanced approval of the expense; and

c. The Contractor's timely and appropriate submission of invoices/requests for reimbursement in compliance with Section 8.06(E) entitled "Reimbursement Requirements" and the Fiscal Manual including the Payment Bulletin. The Contractor must submit invoices/requests for reimbursement to ACS by the deadline for submission of invoices/requests for reimbursement outlined in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with the Fiscal Manual including the

Payment Bulletin and is received after the time frame indicated in the Payment Bulletin may be disallowed.

E. Reimbursement Requirements

1. The Contractor shall submit all invoices/requests for reimbursement on a form acceptable to ACS for Special Payments, expenses related to PYA Funding, Reinvestment Funding and all other expenses outlined in the Payment Bulletin and this Section 8.06 no later than the deadline for invoices/requests for reimbursement provided in the Payment Bulletin. Any invoice/request for reimbursement which does not comply with ACS Policies and is received after the time frame indicated in the Payment Bulletin may be disallowed.

2. ACS' rate of reimbursement to the Contractor for any expense in connection with this Agreement including Special Payments and/or expenses listed in the Payment Bulletin shall not exceed the maximum amount allocable by Law, ACS Policies, the Fiscal Manual including the Payment Bulletin and the Budget.

Section 8.07 Budget Modifications and Amendments

All increases and decreases of the Budget shall become effective only by duly executed and approved amendments to this Agreement.

Section 8.08 Accounts

A. The Contractor shall establish and maintain one or more separate accounts for the funds obtained from or through the City of New York related to this and all other agreements with the City, and shall maintain records for such account to track and clearly identify the funds obligated through this Agreement.

B. The Contractor shall provide to ACS immediately upon request copies of all bank records including bank statements and cancelled checks.

C. The Contractor shall notify ACS of the names, titles, and business addresses of such persons authorized by the Contractor to receive, handle or disburse monies under this Agreement, including the company name and company address where such persons are not employees of the Contractor. Such notification must be in writing and furnished to ACS within five (5) days from the execution of this Agreement, and within five (5) days from any subsequent change or substitution of authorized signatories.

Section 8.09 Reporting Requirements

The Contractor shall file annually and shall provide to ACS upon request the following reports:

1. IRS Form 990 upon submission to the IRS, and any subsequent amendments to Form 990;

2. All forms mandated by the State in the Standards of Payment system at the time they are submitted to the State; and

3. Reports required by the City Comptroller no later than six (6) months after close of the Fiscal Year.

Section 8.10 Final Payment

Notwithstanding anything to the contrary contained in this Agreement, final payment shall be deemed to have occurred upon the occurrence of any of the following events:

1. the expiration of six (6) years and ninety (90) days from the date of the Contractor's submission of forms/documentation required by the New York State Standards of Payment for Foster Care of Children Program Manual to ACS and/or OCFS, if no draft audit has been issued; or

2. the later of (i) issuance of the final audit (as defined in Section 10.02 of this Part II entitled "Audit by ACS" and Section 10.03 of this Part II entitled "ACS Audit Dispute Resolution") or (ii) execution of a Settlement Agreement between the Comptroller's Office and the Contractor after completion of an Appeal Conference as provided for in Section 10.03 of this Part II entitled "ACS Audit Dispute Resolution"; or

3. filing by the Contractor of a final judicial resolution of any contested audit or disallowance; or

4. filing with the Comptroller of the certificate for the final payment under this Agreement; or

5. acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means.

Section 8.11 Compliance with the Law and Policies

All payments using City, State and Federal dollars made to or by the Contractor in connection with this Agreement and the services provided pursuant to this Agreement shall comply with the Law, this Agreement and all OCFS and ACS policies, procedures and bulletins in effect at the time of payment.

Section 8.12 Cost Allocation

A. ACS requires the Contractor to fairly and accurately allocate costs which are attributable to the operation of two or more programs among such programs by a method which represents the benefit of such costs to each program, or a method as set forth in the *New York State Standards of Payment for Foster Care of Children Program Manual*. The Contractor shall

have a cost allocation plan setting forth such fair and accurate allocation of costs and shall submit its cost allocation plan to ACS within thirty (30) days of ACS' request. The Contractor's cost allocation plan shall be updated annually.

B. The Contractor shall not receive reimbursement from another funding source, including the City or another department of the City, when City funding pursuant to this Agreement is fully covering a particular expense, except upon the express written permission of ACS. Written permission of ACS shall not be required where the supplemental funding is intended to improve the service to be provided. Notwithstanding the provisions of this paragraph, the Contractor shall be permitted to seek private or public support to fund the costs of delivering work. Reimbursement for clients being served by the Contractor in a distinctly different program shall not be construed as payment for duplication of contracted services.

C. In no event shall the Contractor submit duplicate costs for reimbursement to separate City, State or Federal agencies. In the event of duplicative billing, ACS shall have the right to offset or recoup the duplicative billed amount from the Contractor.

D. The Contractor shall:

1. Establish an allocation methodology that fairly, reasonably, and accurately apportions costs and include that allocation methodology in its cost allocation plan;

2. For each fiscal year, maintain books, records, documents and other evidence, in sufficient detail to support all claims against the Contractor's family foster care program, including those that have been made on a cost allocation basis;

3. Make the records available for review by ACS or its representative(s) upon reasonable notice and request; and

4. Review allocation percentages on an annual basis and adjust them as necessary to reflect a reasonable cost distribution among programs.

Section 8.13 Family Court Sanctions

In the event the Family Court imposes a fine or sanction against ACS which arises out of an act or failure to act by the Contractor, ACS may, in its sole reasonable discretion, and on a case by case basis in discussion with the Contractor, direct the Contractor to pay the fine or sanction, in whole or in part, and the Contractor herewith agrees to make such payment, or ACS may, in its sole discretion, withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said fine or sanction.

ARTICLE 9. DENIAL OF REIMBURSEMENT

Section 9.01 Denial of Reimbursement

A. 1. Expenditures by the Contractor for the care and maintenance of a Foster Child, and the administration thereof, shall not be reimbursed in whole or in part by ACS in such instances when, by an act or failure to act by the Contractor ACS has been denied reimbursement by the Federal Department of Health and Human Services pursuant to the Law including Title IV-E of the Social Security Act. Moreover, the City may order the Contractor to make repayment, and the Contractor herewith agrees to make such repayment, of any monies previously paid as reimbursement under the terms of this Agreement for which ACS was denied reimbursement by the State and for which such denial of reimbursement was attributable to an act or a failure to act by the Contractor.

2. In the event that another provider or providers have cared for the Foster Child during a period of time which is the subject of a denial of reimbursement, ACS shall, in its sole reasonable discretion, allocate the liability among the Contractor and the other provider or providers in accordance with procedures promulgated by ACS.

B. Contractor Liability: The Contractor shall be liable for any denial of reimbursement imposed upon ACS by OCFS pursuant to the Law including Title IV-E of the Social Security Act when such denial results from an act or failure to act by the Contractor.

ARTICLE 10. AUDIT

Section 10.01 Contractor's Audit

The Contractor shall conduct an annual financial audit performed by an independent CPA. The Contractor shall submit the annual audit to ACS' Office of Audit, 150 William Street, 10th Floor, New York, New York 10038 within thirty (30) days after the Contractor's receipt of the final report but no later than nine (9) months after the audit period. The Contractor shall provide within thirty (30) days of ACS' request copies of all ACS requested records. The audit period shall be for a one (1) year period beginning July 1st. The audit must contain an opinion regarding the Contractor's financial statements in conformity with GAAP and shall contain a separate opinion of the adequacy of the Contractor's internal controls to safeguard its assets.

Section 10.02 Audit by ACS

A. ACS may conduct an audit of the Contractor at ACS' discretion and the Contractor shall fully cooperate with all requests for documentation in accordance with this Agreement. The ACS audit shall be conducted in accordance with the *New York State Standards of Payment for Foster Care of Children Program Manual*. If an audit is conducted by ACS, a draft of such audit must be issued within six (6) years and ninety (90) days from the date the Contractor submits applicable forms/documentation required by the *New York State Standards of Payment for Foster Care of Children Program Manual* to both OCFS and ACS and the final audit shall be issued within ninety (90) days of the Contractor's submission to ACS of a written

response to the draft audit. If the Contractor fails to submit to ACS a written response to the draft within thirty (30) days of Contractor's receipt of the draft audit, the Contractor shall be deemed to have accepted the contents of the draft audit. The Contractor may request from ACS an extension to the thirty (30) day comment period and such extension shall be granted at ACS' sole discretion and must be in writing.

B. In the event the Contractor submits a written response to the draft audit and the Contractor's objections are supported by voluminous data or require that the auditors visit the Contractor's offices to review its books and record or if the Contractor's records are complex in nature, ACS may, in its sole discretion, extend the ninety (90) day period in which it shall issue the final audit, by an additional ninety (90) days. ACS in its sole discretion may provide for further extensions beyond the ninety (90) days. In any instance where ACS is materially prevented from completing a draft or final audit as a result of the conduct of the Contractor, the time period during which the Contractor's actions (or in-actions) prevented such completion of the draft or final audit, shall not be included, and shall specifically be excluded, for purposes of computing the time periods for issuing the draft or final audit.

C. The Contractor shall be afforded an audit exit conference, prior to the issuance of a final audit. At the exit conference the preliminary findings of the auditors shall be made known to the Contractor as well as a brief explanation of the basis upon which the auditors have made such preliminary findings. The Contractor may be represented at the exit conference by anyone authorized by the Contractor to act on its behalf.

D. The fiscal records of the Contractor under this Agreement shall be examined by ACS at such times as ACS considers necessary.

E. The performances of ACS auditors shall be in accordance with GAAP and only those rules, regulations and procedures in effect at the time of actual expenditure will apply.

Section 10.03 ACS Audit Dispute Resolution

The following subsections establish procedures for resolving disputes arising from an ACS audit of the Contractor.

1. A copy of the final audit report shall be forwarded to the Contractor by ACS.

2. ACS shall notify the Contractor, in writing, within thirty (30) days of ACS' acceptance of the final audit of the action ACS intends to take as a result of the final audit, if any, and of the Contractor's right to have any of the Contractor's audit objections be reviewed by the ACS Audit Review and Appeals Panel ("Final Audit Notification").

3. The audit shall be considered final and ACS shall take such action as noted in the Final Audit Notification, unless the Contractor requests, in writing, within thirty (30) days of receipt of the Final Audit Notification, that the Contractor's audit objections be reviewed by the ACS Audit Review and Appeals Panel ("Appeal Request"). The Appeal Request must

contain all objections and disputes concerning the audit and briefly detail the specific items of the final audit with which the Contractor disagrees. The Contractor may request a conference ("Appeal Conference") with the ACS Audit Review and Appeals Panel in its Appeal Request. The purpose of the Appeal Conference is to give the Contractor an opportunity to make an oral presentation and to document its objections to the audit findings, and to give the Audit Review and Appeals Panel an opportunity to clarify any issues.

4. If the Contractor fails to request an Appeal Conference in its Appeal Request, the ACS Audit Review and Appeals Panel shall make its determination based on the final audit, the Final Audit Notification and the Appeal Request.

5. If the Appeal Request contains a request for an Appeal Conference, the Appeal Conference shall be scheduled within thirty (30) days or as soon thereafter as possible. The Contractor will be notified, in writing, of the date and location of the Appeal Conference.

6. At the Appeal Conference the Contractor may make an oral and/or written presentation and respond to questions of the ACS Audit Review and Appeals Panel. There shall be no post-conference submissions, unless specifically requested by the ACS Audit Review and Appeals Panel.

7. The ACS Audit Review and Appeals Panel shall make a determination regarding all items originally objected to by the Contractor. The Contractor shall be advised, in writing, of the ACS Audit Review and Appeals Panel's decision. The ACS Audit Review and Appeals Panel shall provide a detailed statement of the factual basis underlying its decision regarding any disallowance.

8. The decision of the ACS Audit Review and Appeals Panel shall be final and bindings on the parties. The ACS Audit Review and Appeals Panel may negotiate settlements regarding ACS audits or refer part or the entire audit back to the auditors.

9. The informed review procedure set forth above shall not be deemed to constitute a waiver, by either party, of any and all other rights or remedies at law or pursuant to this Agreement.

10. All notices to be provided pursuant to this Article shall be certified mail, return receipt requested.

Section 10.04 Recoupment

A. When any audit of the Contractor discloses overpayments and/or disallowed costs, which were previously made by the City to the Contractor, pursuant to any agreement between the Contractor and the City including this Agreement, ACS may, at its option, withhold for purposes of set-off monies due and owing to the Contractor. The Contractor may propose a re-payment schedule; however such repayment schedule must be submitted to ACS within thirty (30) days from the Contractor's receipt of ACS' notification of overpayment and/or

disallowance. ACS in its sole discretion may accept or deny the Contractor's proposed repayment schedule.

B. Before ACS commences recoupment through set-off, based upon an ACS audit pursuant to this Agreement, the Contractor shall be afforded the opportunity to convene the audit dispute resolution procedure, as more fully described in this Article, and no set-off shall be made until such procedures are completed.

C. If an audit by ACS conducted pursuant to Section 10.02 of this Part II entitled "Audit by ACS" discloses an underpayment by ACS, ACS in its sole discretion, may pay the amount of the underpayment to the Contractor or offset the amount against amount owed by the Contractor to ACS, if any.

Section 10.05 Federal Audit Requirements

If applicable, the Contractor shall fulfill the audit requirements of the Federal Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations," and shall provide such audit to ACS within thirty (30) days after its receipt of the final audit by the Contractor from the preparing accountant.

Section 10.06 State Charities Registration and Audit Requirements

If the Contractor is required by New York State law to register with and make annual filings to the Charities Bureau of the New York State Department of Law, timely compliance with such requirements shall be deemed a material term of this Agreement. The Contractor shall make available to ACS all such filings, including any audit and/or financial report required to be submitted with such filings, within thirty (30) days of receiving such final audit or financial report from its preparer, and in no event later than ten (10) days following the filing of such audit or financial report with the Charities Bureau.

ARTICLE 11. MONITORING, EVALUATION AND QUALITY IMPROVEMENT

Section 11.01 Monitoring, Evaluation and Quality Improvement

A. The Contractor shall have a quality assurance plan in place that describes how it will provide quality assurance, planning and program evaluation for Foster Children placed in its care.

B. Contractor Participation in Collection of Information for Review Procedures: The Contractor shall participate in on-going ACS assessment, evaluation, and monitoring review procedures on the performance of Foster Care services and provide all information appropriate to allow ACS to conduct these review procedures and complete a full review of the Contractor's family foster care program.

C. ACS Data Collection and Program Evaluation

1. ACS shall collect and monitor data as part of a full evaluation process and monitor program performance indicators as appropriate and as needed. ACS shall provide data and the evaluation to the Contractor in a timely manner, as appropriate, to support the Contractor's decisions regarding any needed changes.

2. ACS will establish and notify the Contractor of evaluation standards prior to their implementation. Standards will be established in advance of the evaluation period. The Contractor will be afforded the opportunity to rebut an evaluation before it is made final by ACS.

3. ACS may in its sole discretion:

a. Implement monitoring methods including, but not limited to, direct contact with Recipients of Services including Foster Children and birth/caretaker families and foster families by telephone or mail to assess the sufficiency, efficiency and adequacy of the services performed.

b. Have ACS personnel visit the Contractor to enable ACS to assess and determine the effectiveness of the Contractor's staff on a regular basis. During site visits, ACS personnel may provide technical assistance in solving problems affecting the provision of family foster care services.

c. Review all program activities, procedures, records, and records recording, and conduct other evaluatory activities as ACS deems necessary and appropriate, including, at reasonable times, unannounced and unscheduled visits.

d. Duplicate all of Contractor's records, forms, and other data, which ACS deems necessary as they relate to this Agreement.

D. ACS shall provide the Executive Director and Board of Directors of the Contractor with written information concerning the results of monitoring visit or evaluation.

E. All records of the Contractor kept pursuant to this Agreement shall be subject at all reasonable times to inspection, review or audit by City, State, or Federal personnel and other personnel duly authorized by ACS.

F. The Contractor agrees that a program and facilities review, including unannounced visits, meeting with Foster Children and birth/caretaker families and foster families, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services, may be conducted at any reasonable time by ACS, State and Federal personnel, or other persons duly authorized by ACS.

G. Monitoring and evaluation performed pursuant to this Agreement shall be in addition to, and shall not be deemed to limit, the right of the Comptroller, ACS and any Federal

or State governmental entity or their designees from conducting fiscal audits or other evaluations.

H. The parties to this Agreement recognize ACS's duty and authority to supervise, monitor, audit and review the activities of the Contractor in providing the family foster care services contemplated in this Agreement. The Contractor agrees to comply with ACS Policies and to provide the information required for any review or evaluation requested by ACS. The Contractor further agrees to implement corrective action plans required by ACS.

Section 11.02 Capacity Building and Oversight (CBO) Review for Not-For-Profit Contractors

If requested by ACS, the Contractor must complete the Mayor's Office of Contract Services (MOCS) Capacity Building and Oversight (CBO) Review process. As part of that process, the Contractor must submit specified documents to the CBO unit of MOCS, which then conducts an evaluation of the Contractor and its operations for compliance with the terms of its contracts, its own by-laws, internal fiscal controls, applicable laws and regulations, and best practices in not-for-profit organization administration. The specified documents may include, but are not limited to, the Contractor's Internal Revenue Service ("IRS") determination of tax exemption, the most recent IRS Form 990 filing; the most recent audited financial statement (including the auditor's letter to the management), the functional budget for the current fiscal year in the format approved by the Board of Directors, an organizational chart identifying key staff by title, a copy of the most recently-approved Board Minutes, the by-laws of the corporation, a roster of the membership of the Board of Directors and a list of Board committees, the Contractor's current policies and procedures as adopted, and any other organizational documents, whether or not they are specifically required to be maintained pursuant to this contract or applicable laws and regulations. In the course of the CBO review process, MOCS may make recommendations to the Contractor, request the Contractor to take certain remedial actions and/or to implement certain policy changes. Any such recommendations and the Contractor's responses thereto, will be provided to the Department for its consideration and any appropriate actions under this contract.

ARTICLE 12. TERMINATION/EXPIRATION

Section 12.01 Termination

A. In addition to the termination rights set forth in Article 10 of Appendix A of this Agreement, ACS and the Contractor shall have the right to unilaterally terminate this Agreement in whole or in part, upon sixty (60) days' written notice to the other subject to the terms of this Agreement including Section 12.02(A) of this Part II entitled "Responsibilities after Notice of Termination or Expiration."

B. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the

termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.

Section 12.02 Responsibilities after Notice of Termination or Expiration

A. Upon ACS's receipt of the Contractor's notice to terminate this Agreement or the Contractor's receipt of ACS' notice of termination or expiration of this Agreement, ACS shall make its best efforts to arrange for the transfer or discharge of all Foster Children to another foster care provider, as soon as possible. Notwithstanding any provision in this Agreement, the Contractor agrees to continue to provide all care and services required by this Agreement and the Law for all Foster Children in the Contractor's care and not to discharge or refuse to continue to provide care and services to such charges until all Foster Children are transferred or discharged at the Commissioner's direction. ACS shall pay the Contractor the rate established in this Agreement or any modified rate established by OCFS, until all Foster Children are transferred or discharged. The City agrees to bring to the attention of OCFS the Contractor's costs and expenses in closeout.

B. Upon notice of termination or expiration, the Contractor shall comply with all ACS close-out procedures, including but not limited to:

1. Accounting for and refunding to ACS, within thirty (30) days after notice of termination or expiration, any unexpended funds which have been provided to the Contractor pursuant to this Agreement;
2. Furnishing within thirty (30) days after notice of termination or expiration an inventory to ACS of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any ACS or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to ACS or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to ACS, within ninety (90) days after termination or expiration, final report of receipt and expenditures of funds relating to the Agreement. The report shall be made by a CPA or a licensed public accountant;
5. Transmitting forthwith to ACS copies of all case records; and
6. Providing reasonable assistance to ACS in the transition, if any, to a new contractor.

C. This Section shall survive the termination or expiration of this Agreement.

Section 12.03 Threatened Termination by Contractor

The Contractor expressly agrees that it will not join together with other family foster care and/or residential care providers under contract with ACS to threaten termination of their respective agreements for the purpose of coercing ACS to modify or renegotiate the terms of an existing agreement. This provision is not intended to proscribe consultation among such ACS contracted family foster care and/or residential care providers.

Section 12.04 Miscellaneous

The requirements, rights and remedies provided in this Article shall not be exclusive and are in addition to all other requirements, rights and remedies provided by Law or under this Agreement, including Article 10 of Appendix A entitled "Termination, Default and Reduction in Funding."

ARTICLE 13. SURVIVAL OF TERMS

Section 13.01 Survival of Terms

Notwithstanding any other provision in this Agreement to the contrary, the provisions of this Agreement which are specified as surviving and/or provisions which by their nature contemplate effectiveness beyond the termination or expiration of this Agreement shall survive termination or expiration of this Agreement. Any such surviving provisions which require for their effectiveness the survival of other provisions of this Agreement shall also survive termination or expiration of this Agreement.

ARTICLE 14. CONTROLLING ORDER

Section 14.01 Controlling Order

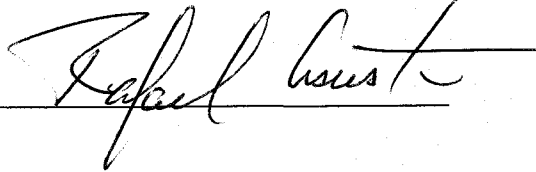
ACS' Request for Proposals ("RFP"), Contractor's proposal ("Proposal") and the negotiated addendum ("Negotiated Addendum") (if any) to the Proposal are attached hereto and made a part hereof. The terms and conditions of Part I and II and Appendix A of this Agreement shall govern in the event of any conflict with the RFP, the Proposal and the Negotiated Addendum to the Proposal. In the event that the Agreement is silent on any point, the terms and conditions of the RFP shall govern over any conflicting provision(s) of the Proposal and the Negotiated Addendum to the Proposal. In the event that the RFP is silent on any point, the terms and conditions of the Negotiated Addendum to the proposal shall govern over any conflicting provisions of the Proposal. Therefore, the controlling order shall be (1) the Agreement; (2) Attachment I - the RFP; (3) Attachment IV - the Budget; (4) Attachment II - the Negotiated Addendum; (5) Attachment II - the Proposal.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

CITY OF NEW YORK
ADMINISTRATION FOR CHILDREN'S SERVICES
COMMISSIONER

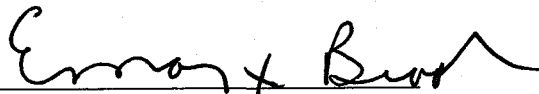
By



Corporate Contractor
Affix Corporate Seal:

Community Counseling & Mediation
CONTRACTOR

By



Title President & CEO

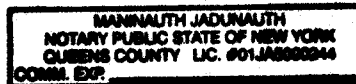
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Fed. Employer I.D. No. or
Soc. Sec. No

STATE OF NEW YORK)
 :SS:
 COUNTY OF NEW YORK)

On this 16th day of May 20 11, before me personally came
Rafael Arueta, to me known and known to me to be
Deputy ACO of the ADMINISTRATION FOR
 CHILDREN'S SERVICES of the CITY OF NEW YORK, the person described in and who is
 duly authorized to execute the foregoing instrument on behalf of the Commissioner, and he
 acknowledged to me that he executed the same for the purpose therein mentioned.

[Signature]
 NOTARY PUBLIC



STATE OF) New York
 :SS:
 COUNTY OF) New York

On this 9th day of May 20 11, before me personally came
Emory X. Brooks, to me known, who, being by me duly sworn, did
 depose and say that he resides at 1 Hoyt St 7th Fl Bklyn, NY 11201, that he is the
President & CEO of the
Community Counseling & Mediation, the corporation described in and
 which executed the above instrument; that he knows the seal of said corporation; that the seal
 affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of
 Directors of said corporation, and that he signed his name thereto by like order.

[Signature]
 NOTARY PUBLIC

LARRY SMITH JR.
 NOTARY PUBLIC, State of New York
 No. 01SM6186354
 Qualified in Kings County
 Commission Expires April 28, 2012

APPENDIX A

GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN and CLIENT SERVICES

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. "Agency Chief Contracting Officer" or "ACCO" shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. "Agreement" shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. "City" shall mean The City of New York.

D. "City Chief Procurement Officer" or "CCPO" shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. "Commissioner" or "Agency Head" shall mean the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.

F. "Comptroller" shall mean the Comptroller of the City of New York.

G. "Contractor" shall mean the entity entering into this Agreement with the Department.

H. "Days" shall mean calendar days unless otherwise specifically noted to mean business days.

I. "Department" or "Agency" shall mean the City agency that has entered into this Agreement.

J. "Law" or "Laws" shall mean the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

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K. "Procurement Policy Board" or "PPB" shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. "PPB Rules" shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.

M. "State" shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS
AND WARRANTIES**

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal

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interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the

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Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

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public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

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2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers'

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Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any

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person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

Section 4.06 Non-Discrimination: Admin. Code § 6-108

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not

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more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

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1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

**ARTICLE 5 - RECORDS,
AUDITS, REPORTS, AND INVESTIGATIONS**

Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

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Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are

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subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency

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or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or

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her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the

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Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed

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above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

**ARTICLE 6 - COPYRIGHTS,
PATENTS, INVENTIONS, and ANTITRUST**

Section 6.01 Copyrights

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that

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the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Section 6.03 Pre-existing Rights

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In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

Section 7.03 Professional Liability Insurance

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A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Administration for Children's Services, 150 William Street, New York, New York 10038, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation

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Insurance;

3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner, City of New York Administration for Children's Services, 150 William Street, New York, New York 10038, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

- A. Where notice of loss, damage, occurrence, accident, claim or suit is required

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under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged, or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of

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this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

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Section 8.07 Withholding of Payments

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

Section 9.02 Changes Through Fault of Contractor

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor,

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no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of

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this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

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e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been

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payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

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Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

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This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered

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pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

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3. **Agency Head Determination.** Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. **Time, Form, and Content of Notice.** Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. **Agency Response.** Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

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4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real

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Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. **Agency Response.** Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. **Further Proceedings.** The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. **CDRB Determination.** Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be

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limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be

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construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the

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services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.06 Voter Registration

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system

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where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

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1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

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C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.08 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

Section 13.09 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene

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pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.
2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.
3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.
4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.
5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

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B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

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VENDOR NAME CHECK FEES

Pursuant to PPB Rule § 2-08(f)(2), the Contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The Contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the Agreement. If this Agreement has an estimated value of less than or equal to \$1,000,000, the fee is \$175 per Vendor Name Check. If the Agreement has an estimated value of greater than \$1,000,000, the fee is \$350 per Vendor Name Check.

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PUBLIC ASSISTANCE HIRING COMMITMENT

A. Except as otherwise provided by Paragraph G below, Contractor agrees as a condition of this Agreement, to hire at least one Public Assistance Recipient ("PA Recipient") for each \$250,000 in value of this Agreement, or to the extent that the Contractor enters into other contracts with the Department of the City, for each \$250,000 of the cumulative value of contracts of the Contractor during the term of this Agreement.

B. Such hiring shall be for full-time employment of at least a minimum of thirty-five (35) hours per week. The rate of pay shall be at least 20% above the federal minimum wage, and the duration of the employment shall be for at least one (1) year. In the event that a replacement of a PA Recipient is made by the Contractor during the one (1) year, such replacement shall not count as an additional employee toward Contractor's hiring requirement set forth herein.

C. Within thirty (30) days of the commencement date of this Agreement ("commencement date") or fifteen (15) days following notice from the Department that a request for an exemption from the provisions of this Rider has been denied, Contractor shall submit, on forms specified by the Department, information and specifications for the position(s) available.

D. The Contractor may at its option request the assistance of the Department in identifying potential employees. In such case, the Department will refer PA Recipients to the Contractor for employment interviews.

E. Contractor shall hire the number of employees agreed upon pursuant to this Rider within ninety (90) days of the commencement date or such longer period as may be specified, in writing, by the Department.

F. In the event Contractor fails to hire the required number of PA Recipients within the required time period, or fails to pay and retain such employees pursuant to the above requirements, Contractor shall pay to the Department or the Department may at its option, deduct from monies due or become due to Contractor, the amount of nineteen dollars and eighteen cents (\$19.18) per employee for each calendar day for which such PA Recipient(s) is/are not employed by Contractor as required by this Rider. Such amount is hereby fixed and agreed as liquidated damages.

G. Contractor may apply to the Department for exemption from all or part of the requirements of this Rider. Any application for an exemption must be made before the expiration of thirty (30) days after the commencement date of this Agreement, or any subsequent contract as discussed in Paragraph A herein, and shall be in the form specified by the Department. Exemption may be granted upon a showing that the operation of this Rider will constitute an extreme hardship, within the sole discretion of the Department; or to any Contractor not employing twenty (20) or more employees at a place of business within the City of New York.

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AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder [below]

Community Counseling & Mediation

Address 1 Hoyt Street, 7th Floor

City Brooklyn State NY Zip Code 11201

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

☐ B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

☒ C - Corporation

EMPLOYER IDENTIFICATION NUMBER 11-2675243

By Ernest + Brock
Signature

President and CEO
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

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CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

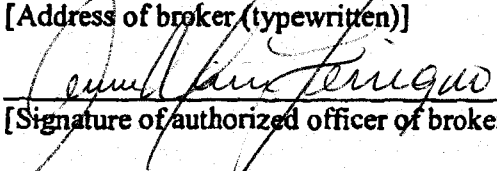
The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

M.T.M Global Insurance Brokerage Group, Inc.

[Name of broker (typewritten)]

25 Rockwood Place, Suite 210
Englewood, NJ 07631

[Address of broker (typewritten)]



[Signature of authorized officer of broker]

Anne Marie Ferrigno

[Name of authorized officer (typewritten)]

Vice President

[Title of authorized officer (typewritten)]

201-720-7620

[Contact Phone Number for Broker (typewritten)]

aferrigno@mjmglobal.com

[Email Address of Broker (typewritten)]

Sworn to before me this

30th day of May, 2011



NOTARY PUBLIC

RICHARD G. KADRI
Notary Public, State of New York
No. 01KA#023452
Qualified in Kings County
Commission Expires April 19, 2014